

The
Zemindary Settlement
of Bengal.

IN TWO VOLUMES.

(bound in one)

VOLUME I.

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INTRODUCTION.

THE effects of the zemindary settlement of Bengal will last as long as British rule in India; but already, well conceived ideas of the authors of that settlement seem to be nigh forgotten. They designed a permanent settlement for the ryot, of the same character, and under the same guarantee of its inviolability, as the permanent settlement for the zemindar, and they thought that they had effectually provided for such a settlement, at the rates of 1792, by the Regulations of 1793. Yet we find that in 1879 the Bengal Government has appointed a Committee to consolidate the substantive rent law, and to suggest amendments, as if a permanency of assessment had not been assured to the ryots in 1793 by the authors of the permanent settlement, and as if the rents paid by ryots in the present day were not already so much greater, indubitably, than the pergunnah rates, plus *abwabs* of 1792, as (at least) to assure to the ryots immunity from further enhancement of rent.

2. But the perverse fate of the authors of the zemindary settlement appears not alone in the mislaying of their brightest idea, *viz.*, a permanent assessment for the ryot, but also in the disappointment of their hopes. They hoped much, on their views of the English landed system, from large estates; and laid too little stress on the well-being of peasant properties. In the present day, the happiest condition presented by any agricultural classes is that of the peasant proprietors in Europe; the most insecure and anxious condition is that of the landed proprietors in England; and poverty and indebtedness characterise the condition of the

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mass of the zemindars in Bengal; while the condition of the ryots in one province is wretched, and over a great part of the rest of the lower provinces it is bad.

3. Nearly the whole of the facts in the preceding paragraphs are comprised in the statement that the ryots in Bengal, in the present day, pay, out of the value of the produce of their lands, more, by one-half, than the land revenue obtained from the rest of British India, and that yet the zemindars are impoverished. Even without the appointment of the Bengal Government's Committee there was sufficient in these facts to show the urgent importance of re-considering the lines on which the zemindary settlement was made (or its modelling on the landed system of England), and of ascertaining whether it is really the fact that a permanent assessment for ryots was omitted from a settlement by which its authors "hoped to secure happiness to the body of the inhabitants." The prosecution of this inquiry and a digest of its results, involved a deal of drudgery, wading through ponderous volumes, much dry reading, and hard manual labour; but if, in the result, weighty utterances of India's worthies, well expressed, have been exhumed from an official or parliamentary literature that is practically dead and buried, and from writings of earnest thinkers, and well-wishers of India, who have long since passed away, the reader will perhaps consider himself a gainer by the recovery of extracts, and the collection of information, such as he may not find within the four corners of any other book, and such as may be very helpful in considering that which, for Bengal, is now the question of the day, *viz.*, the rent question.

4. The timeliness of the publication is also assured by the late Resolution of the Government of India, which insists on a real, earnest, resolute reduction of expenditure. It cannot be inopportune to bring under consideration at this time the greatest extravagance which any government in the world has ever committed, *viz.*, the spending of above twenty millions

sterling a year¹ to collect a yearly land revenue of not quite four millions sterling; for such, as a simple fact, is the price paid for the collection of land revenue from Bengal ryots through Bengal zemindars. The reduction of that non-productive expenditure, at a time when a tribute of fifteen millions sterling a year demands the utmost possible development of India's productive resources, is fully as important a measure, and as urgent, as any measures of retrenchment which may be now engaging the attention of the Government.

5. The marginal references in the text of the work are to the numbers, paragraphs, and sections of the several papers in the Appendix. It seems superfluous to add a suggestion that the reader should turn to the Appendices before he reads the text of this work.

6. The papers in the Appendix were to have been limited to subjects directly connected with the zemindary settlement of Bengal; but the progress of the inquiry showed that the condition and *status* of the ryot have been injured, not alone by the mistakes of Lord Cornwallis' benevolence in 1793, but by the legislation of 1859. Accordingly, papers have been added on land tenures in the West; for nothing short of the instructive teaching, by example, of eminent Statesmen of Continental Europe could correct to any purpose legislators' ideas of the fitness of things. It would have been an advantage if the Appendices in the second volume could have been restricted to the papers on European land tenures; but the first volume would in that case have been of inconvenient bulk.

7. Nor has a logical sequence been strictly observed in the arrangement of the papers in the first volume; they are grouped in three divisions of, *1st*, the objects which Parliament and the Home and Indian authorities proposed to

¹ Chapter I, para. 13.

themselves in the permanent settlement, and the complete failure of their purpose in one of its principal aims; *2nd*, the unsatisfactory condition and relations of zemindars and ryots in the present day, and how these have been brought about by the wrong-doing to which Government sorely tempted the zemindars by putting tremendous power in their hands through a mistaken legislation; *3rd*, the legal status of the ryots before 1793,—as then established,—as it continued to 1859,—and as it was altered for the worse by the legislation of that year. There is necessarily some repetition of subjects in the first and third divisions, because the purposes of Parliament and of the authorities in 1793 cannot be understood or critically appreciated without considering the status of zemindars and ryots before 1793, under the law and constitution of India in that day, which Parliament enjoined should be respected.

8. The most prominent feature of the second division is the creation of middlemen—a class which far more, very far more, than the zemindars, have defeated the purposes of the authors of the zemindary settlement. This remark does not apply to that small class of middlemen who personally direct cultivation, but to the great majority of the class who are farmers of rents. Lord Cornwallis and his predecessors justly stigmatized the rapacity of these farmers of rents. He hoped, by the recognition of zemindars as proprietors of the soil, subject to a permanent rent, to get rid of this class; but he effectually provided for the disappointment of his own hopes by his creation of great zemindars, and his unfortunate gift to them of the waste lands of Bengal. Accordingly, middlemen grew and multiplied, until we find them described—in 1852, by a body of intelligent Protestant Missionaries, as the greatest tyrants,—by a member of the Legislative Council in 1856 as the scourge of the country, by zemindars of the 24-Pergunnahs in 1857 as an unmitigated evil, “it being notorious that middlemen are the most oppressive and

extortionate of landlords all over the world.”;—while the Bengal British Indian Association, in the same year, testified that “the worst of landlords are the middlemen.” Where this class is prosperous, no other proof is wanted of how grievously the faith has been broken which was pledged by Government as solemnly to the ryot as to the zemindar in the permanent zemindary settlement.

9. At the same time, this class is peculiar to India; it has ceased from the land even in Ireland, where, for long, middlemen were the curse of the country; and nowhere else, in Europe or in the United States, are middlemen to be found; while in Bengal they will continue to abound so long as the ryots are subject to an enhancement of rent.

10. Accordingly, among the papers in the Appendix, those which discuss and affirm the position that the authors of the permanent settlement intended to fix the rent as permanently for the ryot as for the zemindar, yield to none others in the importance of their subject.

11. The gomashtras of those zemindars who collect their rents without the intervention of middlemen also oppress the ryots to a great extent on their own account, and to a further extent by misrepresenting matters to the zemindar. In common parlance these oppressions are spoken of as practised by the zemindar, because he is the embodiment of the system, though he is personally unconscious of much wrong that is done in his name.

12. That the great zemindars are by no means the worst members of the system of which they are regarded as the embodiment, is evident from two simple facts—*viz.*, that the small zemindars are generally the most oppressive landlords, and that the ryot is a worse master than the zemindar, the condition of the koorfa ryot (or a ryot’s sub-ryot) being worse than that of a zemindar’s ryot, insomuch that the only hope to the koorfa ryot of rising in the scale of well-being is to become the ryot of a zemindar.

13. The acknowledgments in paras. 3 to 7 have been placed here in the forefront of this volume of Appendices, as a caution to the reader to bear in mind, throughout his perusal, alike, of the extracts, as of the author's remarks on the oppressions of zemindars, that the phrase 'zemindar' is used in the sense above explained as denoting the embodiment of a system, so that the extracts and remarks should not be considered as personal to individual zemindars, or to the class of zemindars as distinguished from their gomashtras and from middlemen. The Administration Reports contain acknowledgments of the excellent administration of their estates by several zemindars; among these are names of conspicuous benefactors of their districts and of their kind, whose good deeds are an example for even England's nobility; and even the author's acquaintance with but a few zemindars has enabled him to recognise estimable characters among them. It is farthest, therefore, from his wish or thought that remarks which refer exclusively to the zemindary system should receive a narrower or a personal application. The suggestions in the text for putting an end to the unsatisfactory relations between zemindar and ryot, evidence, it is hoped, the fairness of spirit which the writer has desired to maintain on a subject of hot controversy.

Another explanation is necessary: extreme plainness of speech has perhaps been used in commenting on the proceedings of past governments, including that of Lord Cornwallis; it will be found, however, on an examination of the passages, that the strong writing derives all its force from the received view that Lord Cornwallis declared the zemindars to be proprietors of what, until 1789, was the property of the ryots. The language is a mere rhetorical device for exhibiting the extravagance of this doctrine; for if zemindars were made absolute proprietors of the land in 1793, by expropriating the ryots, then were the authors of the zemindary settlement of all men the most abominable. The language loses

force and applicability, if this view be rejected; and if it be conceded (as the author maintains) that Lord Cornwallis alienated to the zemindars a portion of only the Government's limited share in the produce of the soil, without trenching on the property of the ryot, whose right in his holding was the dominant right which constituted him the proprietor,—subject to payment of only an ancient customary pergunnah rate, which Lord Cornwallis intended should not be increased beyond the rate, plus *abwabs*, of 1793. Understanding the zemindary settlement in this sense, there was no confiscation of ryots' rights in 1793.

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chahye "	<i>ib.</i>	<i>ib.</i>	" b	Select Committee, 1812	<i>ib.</i>	<i>ib.</i>	III
ern districts—				Court of Directors, 1819	<i>ib.</i>	<i>ib.</i>	IV
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rdwan Division	338	<i>ib.</i>	" b	Government Resolution, 1822	<i>ib.</i>	<i>ib.</i>	VI
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THE ZEMINDARY SETTLEMENT OF BENGAL.

CHAPTER I.

ERRATA.

VOLUME I.

Page 39, para. 18, VII, line 17 from top of page, for "unblushing inconsistency, through Law's" read "through Law's unblushing inconsistency."

Page 161, para. 14, III, for "1869" read "1769."

„ 284, „ 15, line 8, for "koboolyuts" read "kabulyuts."

„ 417, „ 35, I, d., line 33, for "lay" read "levy."

„ 423, „ 42, line 12, for "but did not debar" read "without debarring."

VOLUME II.

Page 97, para. 13, line 16 from top of page, for "if ryots were" read "if the ryot was."

Page 163, para. 11, line 13, for "X 18," read "XIX."

pergunnah rate of rent. On 12th April 1786, the Court of Directors wrote: "It is entirely our wish that the natives" (ryots or subjects) "may be encouraged to pursue the occupations of trade and agriculture by the secure enjoyment of the profits of their industry; and that the zemindars and ryots may not be harassed by increasing debts, either public or private, occasioned by the increased demands of Government." Sir John Shore, in the same spirit, was not content that the permanent settlement should be with the zemindar alone;—he observed: "And at present we must give every possible security to the ryots as well as, or not merely, to the zemindar. This is so essential a point that it ought not to

CHAP. I. be conceded to any plan." The Court of Directors, on 19th
 X, 1, iii. September 1792, approving of these views, recognised it as an object of the perpetual settlement that it should "secure to the great body of the ryots the same equity and certainty as to the amount of their rents, and the same undisturbed enjoyment of the fruits of their industry, which we mean to give to the zemindars themselves." Twenty-seven years later, the Court, on 15th January 1819, deliberately re-affirmed: "We fully subscribe to the truth of Mr. Sisson's declaration that the faith of the State is to the full as solemnly pledged to uphold the cultivator of the soil in the unmolested enjoyment of his long-established rights, as it is to maintain the zemindar in the possession of his estate, or to abstain from increasing the public revenue permanently assessed upon him." And that there might be
 X, 1, v. no mistake of their meaning, the Court referred, by way of illustration, to the 24-Pergunnahs and Dinagepore, in which districts the collectors had secured a permanent rent for ryots,
 IX, 3, i. by recording the money amounts of their rents in pottahs, as the sole amounts thenceforward recoverable from them.

3. In confirmation of these unanimous utterances that the permanent settlement was to fix the ryots' rents for ever at the old-established pergunnah rates of 1793, the regulations of that year regarded these as the highest recognised, that is, maximum, rates of rent, and prohibited the levy of fresh *abwabs*, which would have been tantamount to an enhancement of rents. While every other detail affecting the relations of zemindar and ryot was carefully elaborated in the Regulations of 1793, they contain no provision for an increase of that rent which ancient custom had determined as the established pergunnah rate of rent.

4. The intention that by the arrangement of 1793 the ryot's rent should be as permanently settled as the zemindar's,
 IV, 11, xii. at the amount obtaining in 1793, was so well known that it was carried out in the similar settlements in Benares and in the zemindary tracts in the Madras Presidency; and Mr. H. Colebrooke, on the same understanding, urged in 1812 that even then "measures should be adopted, late as it now is, to
 IX, 6, vii. reduce to writing a clear declaration and distinct record of the usages and rates according to which the ryots of each pergunnah or district will be entitled to demand the renewal of their pottahs, upon any occasion of a general or partial cancelling of leases." In the same conviction the Bengal Gov-
 V, 10, iv. ernment, on 1st August 1822, proposed to settle the rents

payable by ryots to zemindars in the permanently-settled Lower Provinces. CHAP. I.

5. Had the recommendation of Mr. Colebrooke in 1812, or the intention of the Bengal Government in 1822, been carried out, the ryots in Bengal would have been ensured a permanent assessment, if not at the established pergunnah rates of 1793, at least at the rates which in 1812 or 1822 were recognised as the established pergunnah rates; they would thus have crept up to near the level of the more fortunate ryots in the Benares division, and in the Northern Circars in the Madras Presidency, who, through the careful painstaking work of their civil administrators, obtained the same permanency of rent as their zemindars, under a permanent settlement which was modelled on that in Bengal.

6. But judge-made law after 1845, the legislature in 1859, and Judges of the High Court in the Great Rent Case in 1865, devised a theory, or so-called principle, that the unearned increment belongs to the zemindars; till, now, Government, the law courts, zemindars, and ryots, are perplexed how to find out that proper rent which the Government of 1793 enacted should be recovered, thereafter, from the ryot at only the established pergunnah rate which was fixed by custom, *viz.*, by a custom determined by ryots who were in request in 1793, and who would not raise the pergunnah rates over their own heads by altering the custom. The simplicity of 1793 has been superseded by a complication in 1879 so em- XXI, 16. barrassing, that, as testified by the Bengal Government not long since, a man must know all about political economy, agricultural economy, trade routes and prices in Bengal, and other things besides, before he is able, and then too he can hardly know enough to be able, to determine what rent ryots should pay to zemindars. Only thus, and in no better way, has been fulfilled the pledge of the authors of the permanent settlement, from the time of Warren Hastings, that the ryot should have the same security in the possession of his holding at a fixed rent, as the zemindar has in the possession of his zemindary at a fixed rent.

7. The zemindars have known to a penny, for the last ninety years, what rent they should pay; the ryots, for whom was designed the same permanency of rent as for the zemindar, are at the expiration of those ninety years as far off as ever from knowing, for more than three to five years together, what rent they are to pay to the zemindar. The two parties are so little agreed, where Lord Cornwallis expected perfect

CHAP. I. harmony, that the Bengal Government has desisted from an endeavour to pass a law for facilitating the recovery of rent until it shall be able also to pass an Act for consolidating and amending the substantive rent law.

8. The Committee for settling that law have a difficult task; nothing less than to reconcile the present with the past: the present, in which rent is an ever-recurring cause of action, with a past in which the highest rent paid was IX, 2, vi. the ancient established pergunnah rate. "The natives of India" (observed the Select Committee of 1831-32) "have a deep-rooted attachment to hereditary rights and offices, and animosities originating in disputes regarding lands descend through generations." In memories so tenacious of custom, especially of customs relating to land, the traditions of old-established pergunnah rates will not be soon obliterated; but, in the degree that they are preserved, the Committee's task of conciliation or compromise will be difficult.

9. But the question arises, even if the authors of the permanent settlement had not designed a permanent assessment for the ryot, ought not such an assessment for him to be secured now, through the exercise of the power which was reserved to the Government at the settlement of intervening at any time to secure ryots' rights? In the Madras and Bombay Presidencies, where the ryot's assessment is XXI, 12. revised every thirty years, it remains fixed for that time; in Bengal, where the Government demand has been fixed for ever since 1793, the ryot's assessment is revised in about every five years, or at shorter intervals. This frequent revision of rent destroys in the ryot all motive to improvement, or to greater exertion than suffices for a bare subsistence; it prevents, in a word, that reserve against famine which, else, every ryot could provide by earning enough to lay by something;—and yet, Lord Cornwallis gave the waste lands of Bengal to the zemindars as a free gift, that they might provide for the people against famine, and abstain from increasing ryots' rents.

10. A thirty years' lease in the temporarily-settled Presidencies of Madras and Bombay, a five years' term of assessment in permanently-settled Bengal,—such, for the real cultivators of the land in Bengal, is the singular result of a measure which was designed to secure to each cultivator of a farm or holding the entire fruits of his own industry.

11. It is not surprising that with this main consequence of the zemindary settlement, the condition of the ryots

through the greater part of Bengal should be bad, and in one province wretched; but were it not for the proverbial unthriftness and indebtedness, as a rule, of classes that live on fixed incomes from land, it would be surprising to learn, on the testimony of the Board of Revenue, that the majority of the zemindars are in debt, and that the money-lenders are the only class who have benefited by the permanent zemindary settlement. CHAP. I.
—
XII, 14.

12. Impoverished cultivators, indebted zemindars, usurious money-lenders,—such are the instruments with which the Government must work in its endeavours to make the people solve the famine problem for themselves,—the only practical solution of the problem which is possible. It cannot be said that the poverty of Bengal has created the difficulty; the annual average, from 1795-96 to 1798-99, of the sea-borne exports of merchandise from Bengal, coasting and foreign, amounted to Sicca Rs. 217 lakhs, including 100 lakhs on the Company's account; in 1877-78 it amounted to 4,414 lakhs. The returns of the number of estates and tenures of all sorts (above the ryot) valued for the road-cess, as given in the Administration Reports to the end of 1876-77, showed, for the districts in which the cess had been introduced, a land revenue of only £3,600,000, a yearly income to zemindars and middlemen of 13 millions sterling, (including 8 millions sterling to middlemen), or nearly four-fold the Government revenue. At the time of the permanent settlement, the revenue of the same tracts or provinces was a little over 3 millions sterling; one-eighth of that amount, or £400,000, would be an outside estimate of the income of the zemindars in 1793, that income having been settled in 1789 at one-tenth of the Government revenue; the 13 millions of zemindary income in 1876 is thirty-two fold that amount. The ryots' holdings are not included in these valuations; and in the amounts thus excluded are comprised the enormous sums paid as interest to money-lenders. XII, 5.

VII, 7, ii

13. There are 241,346 estates (belonging to much fewer than 241,000 zemindars) paying revenue to Government, with an income of 13 millions sterling, or two-thirds the whole amount of gross land revenue of British India. To it must be added, *1st* (as we have seen), an enormous payment of interest to money-lenders by ryots; *2nd*, the expenses of collection and management by zemindars and middlemen, for the road-cess is levied on the net profits of the payer of the cess, and expenses of management and collection are there-

CHAP. I. fore deducted before entering the valuations; *3rd*, *abwabs*, or illegal cesses levied by zemindars, a formidable item (Appendix XII, para. 14); *4th*, the ryots' expenses of litigation, another formidable item, as zemindars very well know, for these expenses include, besides stamp duty and other items, a heavy percentage, as pleaders' fees, a large disbursement for travelling expenses suborning and subsistence of witnesses, and for sacrifices exacted on a composition with the zemindar, if the suit goes against the ryot; *5th*, payments by zemindars and ryots to or for police, outside the expenditure from the police grant. The total payments by the ryots in Bengal, could they be computed, would be simply astounding, and incredible, but for the testimony afforded by the road-cess returns; they probably do not fall far short of 25 or 30 millions sterling; see Chapter XI, paragraph 22; II to IV.

XVI, 9, v,
1, 3.

14. Apart from any question of Government's obligations to the ryots under the zemindary settlement,—in view, merely, of the famine problems of the present day, and of the tribute to England of more than 15 millions sterling a year,—it is impossible to resist the conclusion that the ryots' payments in Bengal should be reduced;—and this conclusion is only strengthened by an examination of the minutes of the authors of the permanent zemindary settlement, and of the laws which they enacted; these show that the ryot's rent was to have been fixed for ever at the pergunnah rates of 1793, plus *abwabs* of that year; while the facts just recited place beyond doubt that the ryot's payments in the present day exceed manifold the scale of his payments in 1793.

15. Hence, it should not be difficult to establish in detail, in the observations which are to follow, that a decree of the legislature prohibiting any further enhancement of ryots' rents in Bengal, would not deprive the zemindars of anything assured to them by the permanent settlement of 1793; on the contrary, it would leave to them more than that settlement designed for them, and it would give to the ryots very much less than a fixity of rent, at the pergunnah rates of 1793, for the securing of which the faith of Government was as solemnly pledged to the ryot as in its corresponding engagement to the zemindar.

16. This prohibition of further enhancement of rent would simplify the substantive rent law, and would root out the middlemen or farmers of rents, who are the curse of Bengal.

CHAPTER II.

ACTUAL PROPRIETORS OF LAND IN 1789 :—RYOTS.

Zemindars and the official mind in Bengal are so habituated to repeated increase of ryots' rents, that the stopping of further enhancement of rent in the permanently-settled Lower Provinces would on the first blush be regarded as a confiscation of proprietary rights of zemindars; it might be more fitly characterised as a measure for extinguishing middlemen. But its true character will be understood best after considering, *1st*, the substantive position or status of the ryot at the time of the permanent settlement; *2nd*, the limited proprietary right which by a legal fiction Lord Cornwallis vested in zemindars.

CHAP. II.

2. On the threshold we meet an enquiry whether the State was not the proprietor of the land. Good authorities V. 6. answer that, according to the law and constitution of India at the time of the acquisition of the dewanny of Bengal by the East India Company, the State was not the proprietor; the sovereign's right was limited to a share of the produce of the soil, and the State's ordinary demand on the ryot was fixed by custom. This answer accords with what was the state of things in other countries where the primitive usages and institutions respecting real property were precisely the same as in India. The reason of the State's existence is the security of individual rights and of private property; and it would have been strange if the State (among the millions of its subjects) had been the sole proprietor of the land, though originally it was reclaimed from waste by individuals, each family for itself, and though it was more generally distributed than other kinds of property.

3. Hence, by the law and constitution of India in 1765, which the Parliament of 1784 desired in this matter to III. uphold, persons other than the State were the proprietors of land in Bengal. Who those persons were, will be more clearly discerned if we look away, first, to the land tenures in other parts of India. In Southern India, in the Deccan, in Rajpootana and Malwa, and in the North-West Provinces of the Bengal Presidency, the right of property in land resic

CHAP. II. with those proprietary rights in land which primitive usage primeval jurisprudence, had established among all European communities as the original form of rights real property. "The tokens of an extreme antiquity (observes Sir Henry Maine) "are discoverable in almost

1, 3. every single feature of the Indian village communities."

4. The traces of these village communities were not distinctly marked in Bengal in 1765; but as the communities were essentially Hindu institutions, Bengal did differ in this regard from the rest of India, except that

III, 10. village communities were then in a state of incipient disintegration through the usurpation of the rights of headmen

VIII, 9. villages by zemindars; while the great body of village proprietors, or members of the village communes, were still presented by the khoddkasht ryots.

5. I. As the Indian village communities were of extreme antiquity, so, too, the proprietary rights in land of members of the village communes constituted a perfect (free from accidental or accessory elements), which was derived from the acquisition (or by descent from the reclaim of land that had been *res nullius*. The union, for mutual defence, and protection, in a village commune, of the holders of these perfect titles, did not derogate from those titles against the rest of the world, including any germs, or possible embryos or germs, of zemindars. Theirs was the perfect title to the land in each village; and any who might come after, could become proprietors of land only in the same way (*i.e.*, by reclaiming it from waste), or by carving estates out of the lands of a village commune, by purchase, violence, or fraud.

II, 13. II. The joint and several property of the members of a village commune in the lands of their own village presented insuperable obstacles to the purchase by strangers of zemindary rights in the whole or major parts of villages. Nor could any one individual sufficient money to acquire by purchase the numerous villages and extensive lands which formed great zemindaries at the date of the zemindary settlements.

VI, 2, iv, c. "Where was the capital to purchase this? It is evident that purchase ever took place; that consequently no transfer of the soil was ever made; and that, therefore, these zemindars are not owners of it."

III. Nor had the members of village communes in Bengal been dispossessed by violence; indeed, it was within living memory that the zemindars (mere office-holders) had the

selves been dispossessed by Jaffier Khan ; and in those days CHAP. II.
when cultivators were few and waste lands extensive, the
oppressions practised upon the ryots did not take the form of
dispossession, but of exactions, apart from the pergunnah
rate of rent, and short of any point which might drive away
the ryots to other zemindaries. This is sufficiently attested
by the fact that down to the permanent settlement, and later, VIII, 9 & 10.
the bulk of the cultivators in Bengal were khoodkasht ryots,
with a tenure identical with—or not less perfect at any rate,
than—the tenure of the resident members of village commu-
nities in other parts of India. Through the usurpation by
zemindars of the functions and lands of village headmen, the
village communities in Bengal were, indeed, being disinte-
grated, but the disintegration only perfected the khoodkasht
ryot's title, by freeing him from obligations towards the other
members of the village commune which, in other parts of
India, trammelled the possessor of a holding in his transfer
of it by mortgage, sale, &c.

6. Such, then, was the proprietary right of khoodkasht
ryots at the date of the permanent zemindary settlement ; it
was valid against all individuals, including zemindars ; and it
was identical with that primitive proprietary right,—that
simple title as the reclamer, or as the descendant of the
reclamer, of waste land,—which prevailed universally as the
form of proprietary right in land among all Indo-European
communities, or in all civilised communities which have a
history and historical traditions.

7. For tracing this identity between the proprietary rights
of khoodkasht ryots and of the primitive cultivating pro-
prietors in the West, we have excluded, as yet, any mention
of the land tax. The imposition of this tax by the State
did not alter the proprietary right of the khoodkasht ryots as
against individuals ; while we have seen that the State was
not the proprietor of the land. The land tax, therefore, in
no way impaired or modified the proprietary title derived
from the reclamation of waste, or by descent from reclaimers
of waste land. The tax, moreover, was a pergunnah rate
which had been established by ancient custom, and which
was so scrupulously respected that,—in the periodical revi-
sions by which collectors of land revenue were required to
pay larger amounts into the exchequer, on account of the
increase of cultivation, in old villages, since the last revision, XVI, 5, ii.
—the extra revenue was assessed on the new cultivation at
the old-established pergunnah rate ; *2ndly*, when, in course

CHAP. II. of time, a material and permanent rise of prices, since the fixing of the established pergunnah rate, had been definitely ascertained, the extra revenue claimed in consequence was demanded in the form of a separate levy of a percentage on the old-established pergunnah rate, which was held to represent the percentage of rise of prices, and which left intact that pergunnah rate. The limitation of the regular assessment to a customary pergunnah rate derogated in no respect from, but rather confirmed, the complete proprietary title of the ryot (Appendix XXIV, para. 2, xi).

8. Furthermore, the State's repudiation of proprietary right in land, and its recognition of the simple perfect title which a cultivator acquired by reclaiming land from waste, XV, 9. were also manifested in the custom or law by which the residents in a village were free to reclaim waste land subject to payment of beneficial rates of rent which rose gradually to, and did not exceed, the pergunnah rate. Thus, so long as there was waste land in a village, the increase of its population was able to acquire property in the land in it.

9. This unreserved admission, by the State, against itself, of the proprietary right of the resident cultivator who reclaimed land from waste, furnished also clear, emphatic testimony against any proprietary right in lands which zemindars, or their ancestors, had not bought, or had not reclaimed from waste, or had not received as a gift from reclaimers of waste, or their descendants.

10. This testimony was fully appreciated by the government of Warren Hastings, and that which preceded his; XVI, 3 & 4. their indignation against the exaction of more than the established pergunnah rates from ryots would have been misplaced if ryots had been mere tenants-at-will; whilst it was but the natural outburst of a feeling of outraged justice in presence of the fact that the resident cultivators were proprietors of the soil, subject only to payment to the State of not more than the established pergunnah rate of rent, plus *State abwabs*.

11. Besides the resident cultivators in each village who were members of the village commune with proprietary IX, 3, xii. rights in the village land, there were stranger cultivators, or those who had been attracted to the village from other villages. These consisted of two classes, namely, one who by long residence had acquired proprietary right on their consenting to pay the established pergunnah rate of rent in place of a lower rate; second, those, not so long resident in the

village, who were cultivating at less than the pergunnah rate, and were in a state of acquiring occupancy, or proprietary right, by further residence and by conformity to the established pergunnah rate. The relations of these two classes were with the resident cultivators in the village, and their status, or the eventual recognition of their occupancy rights, was determined by these resident cultivators. We infer from these circumstances, *1st*, that, even as regards stranger cultivators, proprietary right was not derived from the zemindar, until, by his usurping the functions of the headmen of villages, he broke up the village commune,—and not even thereafter, for his permission to stranger cultivators to settle in a village was formal, if they paid the full pergunnah rate; *2nd*, stranger cultivators generally entered a village as payers of less than the pergunnah rate, and they acquired occupancy rights by conforming to the established pergunnah rates paid by resident cultivators. Unless, therefore, the resident cultivators voluntarily raised the established rates over their own heads, there was no room for an enhancement of those rates, since the zemindar had no legal power to levy more than the established pergunnah rate,—the State denouncing as oppression the exaction of anything beyond what itself had fixed,—and since the State, in raising ryots' payments on account of a rise of prices, scrupulously respected the established pergunnah rates, by leaving them intact, and levying the extra impost as a percentage on the established pergunnah rate. CHAP. II.
XX, 15, v.

12. It was well observed by Mr. Stuart Mill that “the idea of property does not necessarily imply that there should be no rent, any more than that there should be no taxes. It merely implies that the rent should be a fixed charge, not liable to be raised against the possessor by his own improvements, or by the will of a landlord. A tenant at a quit-rent is, to all intents and purposes, a proprietor; a copyholder is not less so than a free-holder. What is wanted is permanent possession on fixed terms.” We have seen that on payment of the established pergunnah rate as a maximum, the khoodkasht ryot, the pykasht (necessarily a reclainer of waste), and the resident reclainer of waste, were, one and all, assured of permanent possession of land by a custom which had been held sacred from time immemorial. In other words, the ryots were the real proprietors of the land at the time of the decennial settlement, and the immemorial usage which determined this proprietary title XVI, 16 & 24.

IAP. II. of the ryots was faithfully observed in that part of the regulations of the decennial settlement which empowered pykasht ryots and others, who held at favoured rates on temporary leases, to claim renewal of their pottahs at the customary established rates of the pergunnah on precisely the same footing as khoodkasht ryots.

13. It appears from this investigation that of the three possible proprietors of land, the State was not the proprietor; while the ryots possessed all those elements of original proprietary right which are derived from the reclamation of waste land, or by descent from the reclaimers of waste; a right which the State's demand upon them,—in great part regulated by custom,—did not impair, and which was identical with the form of proprietary right in land that obtained in the rest of India where there were no zemindars, and in all civilised communities which possess information respecting the origin, among themselves, of land tenures and proprietary rights in land. The ryot's right, thus, was a substantive definite right, such as no legislator in the present day would attempt to destroy by a mere fiat that the right (which, as a fact, inhered in the ryot) belonged to some one else.

CHAPTER III.

ZEMINDARS NOT PROPRIETORS OF THE LAND IN 1789.

After having considered all the evidence tendered to themselves, and the information collected by previous Select Committees, or otherwise laid before Parliament, the Select Committee of 1812, the authors of the famous Fifth Report, recorded their conclusion that the zemindars were not proprietors of the land; theirs was an office to which were attached duties of administration and of the collection of revenue. As an administrator, the zemindar had "to superintend that portion of the country committed to his charge, to do justice to the ryots or peasants, to furnish them with the necessary advances for cultivation," (and as collector) "to collect the rent of Government. As a compensation for the discharge of this duty, he enjoyed certain allotments of land rent-free, and certain perquisites. These personal or rather official lands and perquisites amounted altogether to about 10 per cent. on the collections he made in his district or zemindary. The office itself was to be traced as far back as the time of the Hindu Rajahs. It originally went by the name of *chowdrie*, which was changed by the Mahomedans for that of *crorie*, in consequence of an arrangement by which the land was so divided among the collectors, that each had the charge of a portion of country yielding about a crore of *dams*, or two and a half lakhs of rupees. It was not until a late period of the Mahomedan Government that the term *crorie* was superseded by that of *zemindar*, which, literally signifying a possessor of land, gave a colour to that misconstruction of their tenure which assigned to them an hereditary right to the soil."

2. This conclusion of the able Select Committee of 1812,—formed after a very extensive investigation,—that the zemindar's was an office, and that he was not proprietor of the lands which constituted his zemindary; is abundantly established by citations in Appendix VI, which set forth various indications that marked the purely official character of the zemindar. Even the extract just given from the Fifth Report shows that the administrative and judicial functions of the zemindar were not privileges attaching to his status

CHAP. III.

VI, I, ii.

CHAP. III. — as sole landed proprietor in his zemindary, but duties attaching to his office of zemindar, for which he was remunerated by perquisites, and by land that formed but a very small part of the lands in his zemindary, which latter were not his *neej* lands, that is, his own private lands, but the lands of cultivating proprietors, that is, of mostly khoodkasht ryots.

VI, 17. 3. As stated in the summary at the end of Appendix VI, various incidents of the position of a zemindar until 1793 show that the zemindar's was an office for the revenue, police, and general administration of the area comprised in the zemindary, *viz.*—

I. The zemindars' liability to dismissal, and the wholesale dispossession of them by Jaffier Khan.

II. The exclusion of incompetent zemindars from the management of zemindaries.

III. Disqualification of a zemindar to transfer or sell the zemindary without the sanction of Government.

IV. The exceeding largeness of several zemindaries, and the history of their growth, showed that they were not acquired by purchase or inheritance.

V. The hereditary succession to a zemindary showed that it was an office, for by both Hindu and Mahomedan law real property is equally divided among children.

VI. And even hereditary succession was not effected without great difficulty and expense to the heir.

VII. Also, while the tenth of the Government revenue thus acquired, represented adequately the zemindar's remuneration for official duties, it fell far short of a proprietor's income from his own lands, if of the same extent as zemindary lands.

VIII. Two other circumstances attested, in a marked manner, the purely official character of the zemindar, *viz.*, the appointment of canoongoes and putwarees to check the zemindars' proceedings and collections, by way of protection to the ryots, and the levy by zemindars of transit dues which could be leviable in only their official character.

IX. The zemindar's sunnud, the instructions of Aurungzebe to collectors of revenue, and the testimony of various authorities—Hindu, Mahomedan, and European—attest the purely official character of the zemindars of 1789.

XX, 12 to 14. X. Earliest, and perhaps clearest and most emphatic of all, was the testimony afforded by the settlement of Toodur Mull. If zemindars had been the proprietors, his settlement would have stopped at the lump assessments

of each zemindary; but the distribution of the assessment^{CHAP. III.} was carried lower down to each village and to the holding of each ryot, thus proving unmistakably that the ryot's engagement was with the Government, though he paid his rent through the zemindar. This one fact, coupled with the evidences in Chapter II of the substantive proprietary rights of ryots, would be conclusive against any pretensions of the zemindar before 1793 to the proprietorship of the lands in his zemindary, even if none of the other enumerated indications of his purely official character and status had existed.

XI. The significance of this fact, as denoting unmistakably the ryot's proprietary right and the zemindar's official status, was emphasised or deepened, on each fresh imposition of State *abwabs* subsequent to Toodur Mull's settlement, by the insertion of every one of these cesses against each ryot in the official village record of what he had to pay,—a record which was kept by officials answerable to the Government, and not under the control of the zemindar.

XII. The import of the fact was fully understood by the authors of the zemindary settlement, who enacted a law commanding the zemindars to grant pottahs, and empowering the ryots to compel by suit in the civil courts the grant of pottahs, setting forth in full detail the rent payable by the ryot, and the quantity of land for which he had to pay it. Nothing beyond the amount entered in this pottah was to be recoverable from the ryot; that amount was to constitute the gross demand of the State, and the gross amount payable by the ryot, out of which the zemindar was to retain the remuneration allotted to him by Government, and to pay the rest into the public treasury.

XIII. Once more; the zemindar had no power to raise the ryot's assessment beyond the customary rate, or beyond amounts sanctioned by Government; see Chapter IV, para. 6.

XIV. Lastly, the immense extent of waste land, the sparseness of population, the scarcity of cultivators, the absence of any floating mass of labourers, precluded the possibility of zemindars cultivating large estates by means of hired labour, or of tenants-at-will. The magic of property was the only influence which could attract ryots in those days. XXIII, 2, ii. A similar state of things exists, in the present day, in the United States, of which country it is testified that "the theory and practice of the country is for every man to own

CHAP. III. land as soon as possible. The term landlord is an obnoxious one. The American people are very averse to being tenants, and are anxious to be masters of the soil. Land is so cheap that every provident man may hold land in fee." From the same feeling khoddkasht ryots refused pottahs from zemindars, lest they should be regarded thereby as tenants holding from the zemindars.

4. Thus, the status of the zemindar was purely official; he was an officer of the Government; and we have seen in Chapter II that neither was the State the proprietor of the land. The conclusion is unavoidable that the only remaining, or third party, *viz.*, the cultivating ryot, was the proprietor by a right so unmistakable that to him alone attached incidents of proprietorship which were common to peasant-proprietors in the rest of British India,—including mostly tracts where there are no zemindars,—and in countries in the West where the rights of property in land existed in early days in the same form, and are traced to the same origin, as in the village communities in India.

XVIII, 9 & 10. 5. The ryot was proprietor of the land, subject to payment to the State of the established customary pergunnah rate of rent, plus State *abwabs*. Whatever was taken from him in excess of this was extortion, from which the State was bound—as indeed it admitted its obligation—to relieve him. Hence, there was no room for any claim by the zemindar on the ryot's land, unless it were carved out of the Government's rent or share of the produce of the soil. The ryot's was the dominant right, which represented *dominium* or property in his holding; the gross amount payable by him as rent was *servitus* or easement,—a fraction or particle of dominion broken off from the ryot's property, and limited, so that the power of user remained with the ryot, subject to this restricted *servitus* to the State, rendered through its representative the zemindar.

XXVIII, 17. 6. The zemindary settlement was modelled on the division of land in England into large estates; and analogies between English tenures and those in Bengal were familiar to the authors of the settlement. The analogy between the khoddkasht ryot and the copyhold tenant is not complete, inasmuch as the proprietary rights of the former were more perfect; but it was sufficiently close to have rendered it the most natural thing in the world that the ancient established customary pergunnah rate of rent, which the khoddkasht ryots were then paying, should be continued as their

permanent rent, for ever, in the same regulation of the first time," vested the property in the zemindars, in the fiction, in the zemindars. Accordingly, the Regulations of 1793 limited the demand upon the ryots to the established pergunnah rate, that is, to a rate established by a custom which, in those days of competition for ryots, was determined by the mass of khoodkasht ryots or resident cultivators—a rate, accordingly, which, as determined by the custom of khoodkasht ryots, would not be raised by them, of their own motion, over their own heads. The possibility of an increase of the established pergunnah rate was further guarded against, 1st, by the direction in the Regulations of 1793 that the money amount of rent payable by the ryot for his holding should be entered in his pottah; 2ndly, XVI, 10, by the prohibition of the levy of fresh *abwabs*, and the warning that such levy, whenever discovered, would be punished by a recovery from the zemindar of three times the amount of the levy for the whole period of its imposition. The entry of the money amount of rent for the ryot's holding, in the ryot's pottah, was designed to secure to him the same immunity from any future increase of rent from a rise of prices, as was secured to the zemindar by the limitation of the rent payable by him to a fixed money amount. The same object, too, was served by the prohibition of fresh *abwabs*, for these had constituted the only form in which the State under Mahomedan rule enhanced ryots' rents on account of a rise of prices, while leaving intact the established pergunnah rates of rent.

7. What the State transferred, then, to the zemindar under the Regulations of 1793 was a gross amount of permanently limited demand upon ryots, less the permanently limited amount which the zemindar had to pay to the Government. Nor was the limit of the State rights thus transferred to the zemindars confined to the State demands on the ryots then cultivating the land; it extended also to the demands leviable thereafter from ryots who might bring waste lands into cultivation. For all kinds of ryots, resident and non-resident, old and new, the rent recoverable by zemindars under the Regulations of 1793 was not to exceed the ancient established pergunnah rates, plus *abwabs* of that year.

8. The authors of the permanent settlement could not have done otherwise, that is, could not have conferred greater privileges on the zemindars, without violating the injunctions of Parliament, which they professed to

CHAP. III. out by their permanent zemindary settlement; for Act 24, Geo. III, cap. 25 (2nd Sess., 1781), section 39, had required the Court of Directors to give orders for settling and establishing "in such manner as shall be consistent with justice, and the laws and customs of the country, and upon principles of moderation and justice, *according to the laws and constitution of India*, the permanent rules by which their respective tributes, rents, and services, shall be in future rendered and paid to the said United Company by the said rajahs, zemindars, polygars, talukdars, and other native landholders." The customs of the country, and the laws and constitution of India in that day, entitled the descendants of resident cultivators in a village to take up waste land for cultivation subject to payment, eventually, of not more than the established pergunnah rate of rent; and the Court of

XV, d, iv. Directors recorded as the opinion of various authorities that the gift of waste lands to zemindars was necessarily accompanied by this condition, which was implied in the immemorial custom of the country and the law and constitution of India.

9. We find then that—

I. Of the three parties concerned—*viz.*, the State, the zemindar, and the ryot—the ryot's was the dominant right, that is, he was proprietor, and the demand upon him was that of the State for a gross amount limited by custom, and afterwards specifically limited by the Regulations of 1793, out of which the State remunerated the zemindar.

II. The State was not the proprietor of the soil; its right was limited by custom to the money value of a specific proportion of the produce of the land; and the authors of the permanent settlement limited it further by enactments which, if carried out, according to the intention of the legislature, would have given the same immunity to the ryot as is enjoyed by the zemindar, against enhancement of rent from a rise of prices.

III. The zemindar's interest in the matter was carved out of the State's gross demand upon the ryot; it was subject, therefore, to the limitations which confined that gross demand within a specific money amount, and these limitations applied alike to the lands under cultivation in 1793 and to those subsequently brought under cultivation.

IV. Thus the so-called proprietary right of the zemindar was a very limited one; it was so greatly restricted that it was not *dominium*, but *servitus*,—a rent (or, strictly speaking, a revenue) charge upon property which belonged to another,

and which the zemindar had no power of turning to any use CHAP. III
 he liked without buying it from that other, who was the proprietor. —

10. The Government of 1793 was careful to explain, “for the sake of precision,” that it used the term “proprietor, or actual proprietor,” in a restricted and purely technical XVIII, 13. sense, as denoting the person who paid revenue to Government for himself and for other proprietors, and who in consequence stood recorded in the Government books as proprietor. Hence, in the proclamation of the permanent settlement, the only classes spoken of as proprietors were those who paid revenue direct to the Government. But we know that down to the time of the decennial settlement, XVIII, 14. the way in which proprietary rights commonly grew up was through custom, the ever-surviving law of the East. The Mahomedan rulers did not interfere with this custom: the only occasions which brought them into contact with rights in landed property created by custom were those of collecting revenue from their subjects; and on these occasions they collected according to established custom. They collected, too, through comparatively few officials, whom they set over provinces, districts, zemindaries, without expropriating the actual proprietors, whose title was derived from a custom more ancient than law. It were absurd, therefore, to suppose that at the date of the settlement there were no proprietors of land throughout the vast provinces of Bengal, Behar, and Orissa, other than those who paid revenue to Government under arrangements handed over by a native rule which had always collected through officers who were necessarily very much fewer by far than the millions whose rights as cultivating proprietors, in a country wonderfully tenacious of custom, were patent throughout the land as the custom and tradition of centuries. When, therefore, the Government of 1789 and 1793 declared that only those who paid revenue to Government were the actual proprietors of the land, the declaration was, on the face of it, a mere legal fiction, and a fiction which, it was thought, was guarded from working mischief by the simultaneous declaration that the ryots were not to pay more than fixed money amounts of the established pergunnah rates of rent.

11. Unfortunately the fiction proved full of harm :—

I.—LORD HASTINGS (*31st December 1819*)—

VIII, 7 c.

When an individual is deputed by his neighbours to bargain on their common behalf with the Government, there is no change of relations ;

CHAP. III. he is only the spokesman of the community. * * * But a new capacity is conferred on him, if Government appoint him to be the person with whom, year after year, it is to settle the account. When the character of a zemindar is assigned to him, and responsibility for the payment of the aggregate rent is attached to him, Government virtually constitutes him a public officer. It necessarily invests him with the power of compelling, from the several families of the village, the payment of their respective portions of the general contribution, and our acquaintance with the propensities of the natives must make us sensible that such a power is likely to be misapplied in arbitrary and unjust demands.

VII, 7 d. 15, II.—GOVERNMENT RESOLUTION, 22nd December 1820—

ii.

With this variety in the classes of zemindars, it can be a matter of no surprise that very injurious consequences have followed from a system of management under which all persons coming under engagements with Government, and entered in the Government books as proprietors, have often been confounded as if belonging to one class, and have frequently been considered as the absolute proprietors of the land comprised in the mehals for which they had engaged.

III.—COURT OF DIRECTORS (15th January 1819)—

VIII, 8, iii.

The Board of Revenue, in another passage of their letter, with an express reference to these village zemindars, state that the "mistake of making the perpetual settlement with rajahs as the proprietors of the whole of the lands composing their *rajes*, has chiefly affected "an intermediate class, the village zemindars, to whom no compensation can now be made for the injustice done to them by the transfer of their property to the rajahs. Indeed, the whole of this valuable class may be considered to be extinct in the *Lower Provinces*," &c., &c.

IV.—COURT OF DIRECTORS (15th January 1819)—

X, 3, i.

In the consideration of this subject it is impossible for us not to remark that consequences the most injurious to the rights and interests of individuals have arisen from describing those with whom the permanent settlement was concluded as the *actual proprietors of the land*. This mistake (for such it is now admitted to have been), and the habit which has grown out of it, of considering the payments of ryots as rent instead of revenue, have produced all the evils that might have been expected to flow from them. They have introduced much confusion into the whole subject of landed tenures, and have given a specious colour to the pretensions of the zemindars, in acting towards persons of the other classes as if they, the zemindars, really were, in the ordinary sense of the words, the proprietors of the land, and as if the ryots had no permanent interest but what they derived from them. * * There can be no doubt that a misapplication of terms, and the use of the word "rent" as applied to the demands on the ryots, instead of the appropriate one of "revenue," have introduced much confusion into the whole subject of landed tenures, and have tended to the injury and destruction of the rights of the ryots.

12. To this so baleful fiction the Government had hastily committed itself, when it was found convenient, through

the fiction, to exempt zemindars from the jurisdiction of the Supreme Court (Appendix VI, para. 12). Another object of the legal fiction is easily discerned. On the acquisition of the dewanny by the East India Company, a great number of zemindars were superseded by farmers of revenue. The dispossession of these zemindars was one of the principal "injuries and wrongs" which Parliament, in Act 24, Geo. III, Cap. 25, enjoined the Court of Directors to redress. The only complete redress was to reinstate the zemindars, and to declare that their tenure of their zemindaries was hereditary and alienable. But, as explained by Mr. Austin, in his Principles of Jurisprudence, to transmute a strictly personal privilege, such as was the zemindar's official status, into a heritable, alienable right, it was necessary to confer the right or title mediately through a fact, and the fact selected was the land in each zemindary. CHAP. III XVIII, 14.

13. The personal privilege thus transmuted into a heritable alienable right did not include a right to the unearned increment, for it was that of receiving from the cultivators of land the Government's demand upon the ryot as limited, in the maximum, by the Regulations of 1793, to the established pergunnah rate, *plus abwabs* of that year, and it was limited by a strict prohibition of fresh *abwabs*. The privilege conferred was only part of what belonged to Government, *viz.*, the public tax upon the land; its bestowal on the zemindar, as a heritable alienable right, was without prejudice to the rights of cultivators or ryots, which were expressly reserved by the Government in the regulations that form the deed of the permanent settlement. XVIII, 14.

14. The zemindar can trace his heritable and alienable right of *servitus* on the ryot's holding only up to the Government grant in 1793, whereas the proprietary right of the cultivator was derived from a custom more ancient than law, and long anterior to the permanent settlement.

15. That the right conveyed to the zemindar through the legal fiction which declared him proprietor of the soil, on the strength of his being the payer, direct to Government, of the land revenue of his zemindary, was merely a *servitus*, or revenue charge on the ryots' holding, is evident, further, from the fact that there was no actual delivery of each of the ryots' holdings to the zemindar, such as would have been necessary for completion of his new title, if the proprietary rights of the ryots had been transferred in the zemindary settlement from them to the zemindar. No such confisca- XVII, 23 to

CHAP. III. — tion of ryots' rights was perpetrated; accordingly, no such delivery was made; and accordingly the new rights vested in the zemindar by the Regulations of 1793 were rights that were cut off from the State's total demand upon the ryot, as revenue (simultaneously with the State's surrender of title to the unearned increment, and its denial thereof to the zemindar by the prohibition of fresh *abwabs*) and were not in supersession of the ryot's *dominium* over his holding.

CHAPTER IV.

RENT RATES ESTABLISHED BY CUSTOM.

We have seen in Chapter III that zemindars, before the permanent settlement, were officials, not proprietors of the land in their zemindaries; and that by the zemindary settlement they were constituted proprietors of the soil in a very limited technical sense, which did not trench on the rights of the ryots, and which gave them a property that was carved out of merely the Government's definitely limited share in the produce of the soil. On the other hand, it has been ascertained in Chapter II that the resident cultivators, and those non-resident cultivators who had acquired occupancy rights by long residence, were proprietors of their holdings in a sense in which *dominium* was vested in them, subject to a limited *servitus*, or rent charge to the State, through its representative zemindar. CHAP. IV.

2. A right apprehension of these two facts is essential, for they lie at the root of the rent question. If zemindars were the proprietors of the land up to the date of the permanent settlement (Regulation II of 1793 asserted that "the property in the soil was never before formally declared to be vested in the zemindar"), then any increase in the value of the land, otherwise than through the agency or expense of the ryot, belonged to the zemindar. On the other hand, if the ryot was the real proprietor of the land at the date of the permanent settlement which was designed to secure to the cultivators of the soil the fruits of their own industry, then any increase in the value of the land, otherwise than through the agency or expense of the zemindar, belongs to the ryot. Chapters II and III determine the answer to these alternative questions in favour of the ryot. But one part of the subject, *viz.*, that, by the regulations of the permanent settlement, the rent payable by the ryot was permanently limited to the pergunnah rates, *plus abwabs* of that year, may be investigated in detail.

3. Authorities have been quoted in Chapter I, paras. 1 and 2, which show that the intention of the authors of the permanent settlement was to permanently limit the rent

CHAP. IV. payable by the ryot; and the Regulations of 1793 are in harmony with this intent. Further quotations may be added here:—

I.—Lord Grenville (a member of the Board of Control, in 1784)—

III, 4, i & iv. After long and apparently endless discussion on Indian politics, there was at least one point on which all men then (1784) agreed, *viz.*, that it was the duty, not only of the East India Company, but of the Government and the legislature, to fix the rate of revenue by which that country was thenceforward to be governed. * * He must repeat that no system of taxation could be more detestable in any country than a tax upon the abilities and industry of the husbandman. This system left to the agents of the Company all the villainous oppression of the Mahomedan Government, and imposts were levied upon the cultivators at their discretion. * * The simple question with respect to the zemindary system was, whether you would or would not say to the person on whom you laid the tax, you shall know what the amount shall be. The principle of extending this system of settled taxation was what actuated the mind of Sir Philip Francis, of Mr. Burke or Mr. Fox, and of Mr. Pitt; it was adopted by Parliament, and makes a part of the existing law of India. But since this period we had acquired other provinces, and yet it did not seem the intention of the Company to extend the principle to them; it was not the language of the Company, of the ministry, nor, he was sorry to add, of the Parliament itself. The India Company, in one of their reports, seemed to anticipate the greatest advantage from leaving the system unsettled, and levying the taxes according to the increasing wealth of the districts, or even of individuals.

II.—MR. CAMPBELL—

IV, 9, ix. It had been proposed by Lord Teignmouth, in Bengal, to fix the maximum rates of the public revenue payable by the cultivators to the zemindar at those actually assessed when the permanent settlement was introduced, which, though confirming existing legal cesses, would at any rate have placed a bar against further abuse, and given a precise limitation to the Government demand. * * At Madras the suggestion was strictly adopted, and the maximum rate payable by the cultivator to the zemindar on all land was limited to the actual rates levied on the cultivated land in the single particular year which preceded the limitation of the zemindar's own jumma to Government.

III.—LORD CORNWALLIS—

IV, 6, iii. (a). A permanent settlement, *alone*, in my judgment, can make the country flourish, and secure happiness to the body of inhabitants.

A permanent settlement for comparatively few zemindars, with frequently revised rates for millions of ryots, could not secure happiness "to the body of inhabitants." Lord Cornwallis referred, perforce, to a permanent settlement extending to the ryots.

(b). If Mr. Shore means that, after having declared the zemindar proprietor of the soil, in order to be consistent, we have no right to prevent his imposing new *abwabs*, or taxes, on the lands in cultivation, I must differ with him in opinion, unless we suppose the ryots to be absolute slaves of the zemindars. Every beegah of land possessed by them must have been cultivated under an expressed or implied agreement that a certain sum should be paid for each beegah of produce, and no more. Every *abwab*, or tax, imposed by the zemindar over and above that sum, is not only a breach of that agreement, *but a direct violation of the established laws of the country*. The cultivator, therefore, has in such case an undoubted right to apply to Government for the protection of his property; and Government is at all times bound to afford him redress. I do not hesitate, therefore, to give it as my opinion that the zemindars, neither now nor ever, could possess a right to impose taxes or *abwabs* upon the ryots; and if, from the confusion which prevailed towards the close of the Mogul Government, or neglect, or want of information, since we have had possession of the country, new *abwabs* have been imposed by the zemindars or farmers, the Government has an undoubted right to abolish such as are oppressive and have never been confirmed by a competent authority, and to establish such regulations as may prevent the practice of like abuses in future.

CHAP. IV.
VII, 2, i.

(c). Neither is the privilege, which the ryots in many parts of Bengal enjoy, of holding possession of the spots of land which they cultivate, so long as they pay the revenue assessed upon them, by any means incompatible with the proprietary rights of the zemindars. Whoever cultivates the land, the zemindars can receive no more than the established rent, which in most cases is fully equal to what the cultivator can afford to pay. *To permit him to dispossess one cultivator for the sole purpose of giving the land to another, would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit.*

The italics show that the established pergunnah rate was the maximum rate leviable, whoever might be the cultivator of the land, whether khoodkasht or pykasht; for it is explicitly stated that the zemindar could not gain, that is, could not get a higher rent, by ejecting one cultivator and putting in another. The passage shows unmistakably that, according to Lord Cornwallis' reading of his own permanent settlement, no zemindar could have legal power to exact higher than the pergunnah rate, even from any who might become cultivators after that settlement.

(d). The rents of an estate are not to be raised by the imposition of new *abwabs*, or taxes, on every beegah of land in cultivation. They can only be raised (1) by inducing the ryots to cultivate the more valuable articles of produce; (2) by inducing them to clear the extensive tracts of waste land which are to be found in almost every zemindary in Bengal.

(e). With regard to the rates at which landed property transferred by public sale, in liquidation of arrears, and, it may be added, by private sale or gift, are to be assessed, I conceive that the new proprietor has a right to collect no more than what his predecessor was legally entitled to;

XVI, 9, iii.

CHAP. IV. *for the act of transfer certainly gives no sanction to illegal impositions.*
 I trust, however, that the due enforcement of the regulations for obliging the zemindars to grant pottahs to their ryots, as proposed by Mr. Shore, will soon remove this objection to a permanent settlement. For whoever becomes a proprietor of land after these pottahs have been issued, will succeed to the tenure under the condition; and with the knowledge, *that these pottahs are to be the rules by which the rents are to be collected from the ryots.*

We saw in extract (c) that a change of cultivators, from khoodkasht to pykasht, would not, in Lord Cornwallis' view, entitle a zemindar to raise the rent of the latter beyond the established pergunnah rate; and in this extract (e) we are told that neither could a change of zemindars qualify the new zemindar to levy more than the established pergunnah rate. Thus, the two statements guarded the pergunnah rate from enhancement, under every contingency.

(f). By granting perpetual leases of the lands at a fixed assessment, we shall render our subjects the happiest people in India; and we shall have reason to rejoice at the increase of their wealth and prosperity, as it will infallibly add to the strength and resources of the State.

Reading this with the context, Lord Cornwallis' meaning was clearly that a permanent assessment for the ryots would "render our subjects the happiest people in India." His Lordship never supposed that this result would ensue upon a permanent settlement with the zemindar, and a frequent enhancement of ryots' rents.

VII, 2, iii. IV.—MR. HODGSON, MEMBER OF THE MADRAS BOARD OF REVENUE
 (26th March 1808)—

It is declared to be inconsistent with "proprietary right" that the proprietor should be guided by any other rule than his own will in demanding his rent. * * This mode of reasoning would not, perhaps, have gained so much ground if it had been within the means of all to have obtained the perusal of the interesting discussions on the subject between the Right Hon'ble Marquis Cornwallis and Sir John Shore, the Bengal Regulations, and the proceedings of the Board at Madras, on proposing the introduction of the permanent system. It could have been distinctly seen from these documents that the first principle of the permanent settlement was to confirm and secure *the rights of the cultivators* of the soil. *To confirm and secure* are the terms which must be used, because no new rights were granted, or any doubt entertained upon the following leading features of their right, viz.:—

1st.—That no zemindar, proprietor (or whatever name be given to those persons), was entitled by law, custom, or usage, to make his demands for rent according to his convenience; or, in other words—

2nd.—That the cultivators of the soil had the solid right, from time immemorial, of paying a defined rent, and no more, for the land they

cultivated. This right is inherent in all the cultivators, from the most northern parts of India to Cape Comorin. CHAP. IV.

3rd.—The “proprietary right” of zemindars, in the regulations, is, therefore, no more than the right to collect from the cultivators that rent which custom has established as the right of Government; and the benefit arising from this right is confined, *first*, to an extension of the amount—not of the rate—of the customary rent by an increase of cultivation; *secondly*, to a profit on dealings in grain, where the rent may be rendered in kind; *thirdly*, to a change from an inferior to a superior kind of culture, arising out of a mutual understanding of their interest between the cultivator and proprietor.

Mr. Hodgson recorded his minute on the occasion of discussing the measures for the introduction of a permanent zemindary settlement, into the northern circars of the Madras Presidency, after he had read an exposition by the Governor General in Council of Lord Cornwallis’ similar measure for Bengal. Neither the Governor General nor the Court of Directors impugned the correctness of Mr. Hodgson’s statement of the objects of the permanent settlement,—a statement which was implicitly followed in fixing permanently the ryot’s rent in the permanently settled zemindary tracts in the Madras Presidency.

V.—MILL’S HISTORY OF BRITISH INDIA—

VII, 13, vi.

It is wonderful that neither Lord Cornwallis nor his masters, either in the India House or the Treasury, saw that between one part of his regulations, and the effects which he expected from another, there was an irreconcilable contradiction. He required that fixed unalterable pottahs should be given to the ryots; that is, that they should pay a rent which could never be increased, and occupy a possession from which, paying that rent, they could never be displaced.

The historian of British India took the same view as the Madras Government of the permanent zemindary settlement in Bengal, *viz.*, that it was designed to fix permanently the ryot’s rent, so that, like the zemindar’s, it should be unalterable for ever.

VI.—COURT OF DIRECTORS (15th January 1819)—

The original pottah regulation (VIII of 1793) was also very materially defective, in making no sufficient provision for the ascertainment of the rights in which it professed to secure the ryots by their pottahs. It was of much more importance for the security of the ryot to establish what the legitimate rates of the pergunnah were, according to the customs of the country, or at all events to have ascertained the rates actually existing, and to have caused a record of them in either case to be carefully preserved, than merely to enjoin the exchange of engagements between them and the zemindars, leaving in total uncertainty the rules by which those engagements were to be formed. It is true that to have taken the rates at which the ryots were actually

X, 11, iii.

CHAP. IV. assessed by the zemindars, at the period of the permanent settlement, as the maximum of future demands, would have had the effect, as Mr. Shore observed in one of his minutes, of confirming subsisting abuses and oppressions; but it would, at least, have fixed a limit to them.

The Court clearly understood that the Regulations of 1793 made the pergunnah rate of that day the maximum of future demand.

VII.—BENGAL GOVERNMENT (*1st August 1822*)—

X, 12, i.e. We freely, indeed, admit that, even though the ryots of Bengal had possessed no right of holding their lands at determinate rates, considered in their relation to the Sovereign, it was unquestionably competent to the Government, in fixing its own demands, to fix also the rates at which the malguzar was to make his collections; and it was, we think, clearly intended to render perpetual the rates existing at the time of the perpetual settlement. The intention being declared, the rule is of course obligatory on the zemindars.

X, 3, i.d. VIII. MR. COLLEBROOKE asserts from his own experience that disputes between zemindars and ryots, in the Lower Provinces, were less frequent and more easily determined anterior to 1793 than they now are;—and he further states that “the provisions contained in the general regulations for the permanent settlement, designed for the protection of ryots or tenants, are rendered wholly nugatory,” and that “the courts of justice, for want of definite information respecting their rights, are unable effectually to support them. I am disposed, therefore,” he adds, “to recommend that, late as it now is, measures should be taken for the re-establishment of fixed rates, as nearly conformable to the anciently established ones as may be practicable, to regulate distinctly and definitely the relative rights of the landlord and tenantry.”

There was thus a general agreement, among those who were in a position to know, that it was intended by the permanent settlement to fix permanently the assessment payable by the ryot as well as the rent payable by the zemindar; and this intention was affirmed as well in minutes recorded before the settlement, by its authors, as in other minutes or despatches by those who wrote after the Regulations of 1793.

4. The fifteen Judges of the High Court, in the Great Rent Case, thought differently indeed from the earlier authorities, who, two generations nearer to the facts of 1793, had held that the permanent settlement of that year was designed as a permanent settlement for the ryot. It would be strange if an examination of the Regulations of 1793 did not confirm the testimony of the earlier authorities.

XIX, 10. 5. Sir George Campbell noticed that in those Regulations no provision was made for enhancing ryots' rents on account of a rise of prices. He missed the obvious inference that as zemindars had no power, until 1793, to raise ryots'

rents beyond rates sanctioned by Government, so the omission, in the Regulations of that year, to arm them with a new power of enhancing rent showed unmistakably that the Government intended that the established pergunnah rate of rent as existing in 1793 should not be enhanced. On this point it may, firstly, suffice to refer to the abundant testimony in Appendix XVI, para. 3, that anything beyond the rates established by long usage, and the amounts sanctioned by Government, was not demandable from the ryots, and could be levied only by oppression or as an exaction. Secondly, a citation from the Report of the Select Committee of Secrecy appointed by the House of Commons to enquire into the state of the East India Company in 1773, may be reproduced here from Appendix XVI, para. 35, I—

And Mr. Verelst informed your Committee that, by the ancient rule of Government, agreements with the ryots for lands, which they and their families have held, were considered as sacred, and that they were not to be removed from their possession as long as they conformed to the terms of their original contracts;—but that this rule had not always been observed. And your Committee having enquired whether the rajas, zemindars, farmers, or collectors, have a right to levy any duties, or augment the old ones by their own authority, they find that they have no such right:—though the books and correspondence of the Company afford many instances of the country having been exceedingly distressed by additional taxes levied by the zemindar, farmer, or contractor, but not so much by the two former as by the latter. And Mr. Verelst informed your Committee that the Government *have a right to call upon them for everything so collected*, and that they have been called to an account, since the Company held the Dewanee, in several instances.

The passage in italics, which shows that whatever the zemindar levied in excess of the dues sanctioned by law or by Government was exaction, was closely followed in Regulation VIII of 1793. Section LIV of that Regulation enjoined that the dues payable by each ryot should be consolidated in one specific sum, and that “no actual proprietor of land, &c., shall impose any new *abwab* or *mahtoot* upon the ryots, under any pretence whatever. Every exaction of this nature shall be punished by a penalty equal to three times the amount imposed; and if, at any future period, it may be discovered that new *abwab* or *mahtoot* have been imposed, the person imposing the same *shall be liable to this penalty for the entire period of such impositions*,” as in the instances cited in the Report of the Select Committee of 1773.

6. The facts we note here are:—

1st.—As reported by the Select Committee of 1773, and

CHAP. IV. — until the permanent settlement, zemindars had no power to levy from ryots more than the established pergunnah rate of rent, as sanctioned by custom, *plus* State *abwabs*, as sanctioned by Government.

2nd.—Whatever the zemindars levied in excess was exaction, and they were liable to refund the whole of such exaction for the full period of its levy.

3rd.—The regulations of the permanent settlement directed that the pergunnah rates established by custom, and the State *abwabs*, should be consolidated for each ryot in one sum, and entered in his pottah as the sole amount recoverable from him for his holding.

4th.—Those regulations contain no provision enabling the zemindar to enhance ryots' rents beyond the amount stated in the preceding section; any such new power would have been a departure from established custom. On the contrary, whereas the old form of enhancement, without prejudice to the pergunnah rate, was by *abwabs*, the Regulations of 1793 expressly prohibited the levy of any fresh *abwabs*, and (as in 1773 to 1793) they held the zemindar liable to refund thrice the amount of any exactions for the whole period of their levy.

5th.—The conclusion seems irresistible that as zemindars had no power before 1793, and were not armed with any power by the Regulations of 1793, to raise ryots' rents beyond the established pergunnah rates,—as the pottah containing mention of the money amount of those rates was the sole rule or voucher of the amount recoverable from the ryot,—and as the separate levy of fresh *abwabs* was prohibited,—the Regulations of 1793 did unmistakably provide that the rent of the ryot should not be increased beyond the ancient customary pergunnah rates existent in 1793, *plus* State *abwabs* of that year. The authorities cited in Chapter I and in para. 3 of this Chapter, confirm this conclusion.

7. Discussions in the present day on the Rent Question in Bengal are concerned more with persons, or the several classes of ryots, than with a uniform assessment on land, no matter who occupies it. In this respect the assessment upon ryots in Bengal differs (and the difference is serious) from the assessment in the ryotwar districts of the Madras and Bombay Presidencies. In those districts the assessment is laid upon the land, no matter who cultivates it. This precisely was what the author of the permanent settlement, XVI, 4, iii. Sir Philip Francis, designed for Bengal. In his minute of

1776 he "considered that the rate of assessment per beegah should be fixed for ever upon the land, no matter who might be the occupant." And the Regulations of 1793 faithfully followed Sir Philip Francis on this point. They prescribed, as a general rule, what is now and has always been the rule in ryotwari provinces, *viz.*, that the rate of assessment for the ryot should be fixed upon the land, irrespective of the persons who cultivate it. This general rate was fixed at the pergunnah rate established by custom for each locality; and the rate established by custom was immutable for the particular class of land, and particular kind of special produce of the soil. The exceptions from this general rate, in favour of persons, were only two,—the one a permanent, the other a temporary exception. The permanent exception was in favour of those khoodkasht ryots who had held, for three years before the decennial settlement, at rates lower than the pergunnah rates, and the hereditary successors of these ancient khoodkashts in these excepted holdings. The temporary exception was in favour of pykasht ryots (until the expiration of their leases) and the cultivators of newly reclaimed waste lands (until the expiration of the term for which privileged rates may have been allowed to them as an inducement to cultivate). Practically, the tendency of the principle of assessment established by the Regulations of 1793, for ryots, old and new, was to bring the whole body of cultivators under the ancient established pergunnah rates as maximum permanent rates of rent.

8. We have seen (para. 3, IIIc and e) that, with regard to lands under cultivation in 1789, neither change of ryots nor change of zemindars afforded opportunity for enhancing beyond the established pergunnah rate of rent. And as regards new cultivation since 1789, there was no warrant in the Regulations of 1793, or in later Regulations down to 1859, for exceeding that established rate. By the law and constitution of India, as existing in 1765, which Parliament enjoined should be respected, the cultivators in a village were entitled to reclaim land from waste, subject to payment, eventually, of not more than the established pergunnah rate. This custom was not interrupted by the permanent settlement; for the Regulations of 1793 provided that the Civil Courts should settle disputes between zemindars and ryots in accordance with custom, and Regulation IV of 1793 expressly enacted that among others the cultivators of

CHAP. IV. waste lands should receive a renewal of their pottahs at not
 XV, 4, iv. more than the established rates of the pergunnah for lands
 of the same quality and description. In January 1819 the
 Court of Directors pointed out that "it is the opinion of
 many considerable authorities that on the leases of waste,
 as well as of other lands, the pergunnah rates form a stand-
 ard not to be exceeded." This custom, by which the culti-
 vators of waste land were protected from paying more than
 the established pergunnah rate, negatives the pretensions of
 zemindars to raise the rents of those who became ryots after
 1793, seeing that the custom was perpetuated by the Regu-
 lations of that year.

9. And as with new lands so with new ryots, the Regu-
 XVI, 14 & lations of 1793 made no distinction between new and old,
 15. save to protect new ryots from enhancement to the level
 of the pergunnah rate during the currency of any lease
 existent at the time of the permanent settlement, which may
 XVI, 24. have secured to them a lower rate.

10. Thus, under the Regulations of 1793, the established
 customary pergunnah rate was the eventual rate for old lands
 or new, for resident cultivators or non-resident, excepting
 the comparatively few who held at favoured rates. This
 pergunnah rate continued, in law, the standard maximum
 rate from 1793 to 1859; as such it was recognised in the Sale
 Laws, and in those relating to distraint and the collection of
 the revenue: thus—
 VI, 13 c. & 29, II.

I. Regulations XLIV of 1793, XX of 1795, VII of 1799,
 VIII of 1819, prescribed that a person acquiring an estate by
 purchase at a public sale for arrears of revenue, or in execu-
 tion of a decree of court, or at a private sale, could not raise
 the rent of any ryot above the established pergunnah rates,
 or beyond the lower amount fixed in any unexpired engage-
 ment with the original proprietor, if the estate was bought
 at a sale for arrears of revenue, or with the vendor, if bought
 from him at any other sale.

XVIII, 24. II. Regulation XI of 22nd November 1822, which was
 passed to correct alleged defects in previous regulations, "in-
 asmuch as they do not * * * define with sufficient precision
 and accuracy the nature of the interest and title conveyed to
 the persons purchasing estates sold for arrears of revenue,"
 recognised, as the maximum rate of assessment, that demand-
 able "according to the custom of the pergunnah, mouzah, or
 other local division." In another section (XXXIII) the
 maximum rents were spoken of as "fixed rents, or rents

determinable by fixed rules, according to the law and usage of the country.” CHAP. IV.

11. Of course it was too late in the day, in 1822,¹ for the Government to attempt to alter a regulation of the *permanent settlement* of 1793, which restrained zemindars from exacting more than the established pergunnah rate from ryots; but it is satisfactory to find that no new standard of rent was set up in 1822; the ancient usage of the country continued to determine the rate.

12. It has indeed been contended (by Sir Barnes Peacock XX, 9, iii. among others) that Regulation V of 1812 abrogated the law of 1793, respecting ryots' rents, and empowered the zemindars to grant to all ryots, old and new, excepting certain protected ryots, leases at any rent that might be specifically agreed upon between them. But the contention is not of any worth, for various reasons, *viz.*—

I. As regards ryots, this part of Regulation V of 1812 XVIII, 19 to 24. was practically inoperative; it could come into force only on mutual agreements between the zemindar and the other parties; but the British Indian Association testified in 1859 that even so late as that year fifteen-sixteenths of the ryots held without pottahs. Moreover, the latitude which the Regulation gave related to the period of the lease, and a subsequent Regulation, which legislated about the rent payable under Regulation V of 1812, was restricted to the rents payable by *middlemen*;—such rents alone were matters of contract between zemindar and tenant.

II. If the Regulation of 1812 rescinded the most essential safeguard of ryots' rights in the Regulations of 1793, then nineteen years old, it was *ultra vires*; if any power could thus abrogate an essential safeguard of ryots' rights under the permanent settlement, such power was equally competent to annul the settlement with zemindars.

III. The Regulation of 1812 did not rescind any part of the Regulations of 1793, which limited the demand upon ryots to the established pergunnah rates, for, in that very year, the Select Committee of 1812, which wrote the Fifth Report, was reporting that unheard-of rights had been given to the zemindars, and that ryots' rights needed protection. The Government in 1812 would not have flown in the face of the Select Committee of that year by passing a law empowering zemindars to levy whatever rent they liked from ryots.

¹ Alas! not of course, for the thing was done in 1859.

CHAP. IV. IV. As pointed out by Mr. Justice Morgan, "these Regu-
 XVIII, 23. lations of 1812 were no part of the permanent settlement;" and, moreover, as shown in Appendix XVIII, paragraphs 19 to 23, the provisions respecting rent in the Regulations of 1812 referred to the rents paid by middlemen; the Regulation did
 XVIII, 24. not abrogate any safeguard of ryots' rents. In section XXXII, Regulation XI of 1822, it was stated that nothing in section 9, Regulation V of 1812, was intended "in any respect to annul or diminish the title of the ryots to hold their land subject to the payment of fixed rents, or rents determinable by fixed rules, according to the law and usage of the country."

13. Again, it has been held that the Sale Law, Act XII of 1841, empowered purchasers of estates at sales for arrears of revenue to enhance at discretion the rents of any middlemen or ryots, saving certain excepted classes. But for various reasons this contention does not prove that zemindars became entitled to enhance the rents of ryots generally beyond the established pergunnah rates. For—

I. If the Government in 1841 could thus raise ryots' rents beyond the established pergunnah rates which had been assured to them in the permanent settlement of 1793, they were competent, and, in justice to the tax-payers in British India, were even bound, to similarly raise the rents of zemindars, by reason of the extra income thus accruing to
 XVIII, 31 to them from enhancement of rents beyond the established
 33. rates, which were alone taken into account in the fixing of their assessment in 1793.

II. The status of ryots on estates which were not sold under Act XII of 1841 was not affected by that Act; and even on estates sold under the Act, the status of ryots
 XVIII, 25 to remained unaffected if the auction-purchaser did not, within
 28. a reasonable period, exercise his right to enhance rents in accordance with the law.

III. Furthermore, the power conferred on auction-purchasers (not on zemindars generally) by Act XII of 1841 of enhancing rents at discretion was restricted to the rents of middlemen; all resident cultivators or khoddkasht ryots were within the classes who were protected from enhancement,
 XVIII, 29. as shown in detail in paras. 25 to 28 of Appendix XVIII.

14. A detailed examination of the Sale Laws shows that until 1859 they recognised the established pergunnah rate as the maximum of rent recoverable from ryots. As the avowed theory of the Sale Laws was to place the auction-

purchaser in the same position as the original engager in 1793 for the Government revenue,—as auction-purchasers of zemindaries, in the present day, pay on their estates the same amount of rent which was fixed for those estates in 1793,—and as the resources of the estates have increased since by the cultivation of waste lands,—there could, on the theory of the Sale Laws, have been neither reason nor equity in subjecting ryots to enhancement of rent beyond the established pergunnah rates of 1793, which were assured to them in the permanent settlement.

15. The conclusion we arrive at is, that until 1793 the zemindars were not entitled to raise ryots' rents beyond the established pergunnah rates, *plus* State *abwabs*; that the Regulations of 1793 did not confer on them any such power, but, on the contrary, restrained them from exacting from ryots more than the established pergunnah rates, *plus* State *abwabs* of that year; and that from 1793 to 1859 the law recognised no other than the established pergunnah rate, according to the usage of the country, as the maximum rent recoverable from ryots.

16. We have seen, also, that the authorities who framed, or who carried out, the permanent settlement, and others who were in a position to know, understood that a permanent settlement with the ryot was a part of the plan of the settlement of 1793. We have accordingly to consider now whether there inhered in the ancient established pergunnah rate, existent in 1793, any element of change through the working of which that ancient customary rate could have been altered, to the ryot's prejudice, without a breach of the law which, in 1793, limited the demand on him to the established pergunnah rate, and which, down to 1859, recognised that rate as the maximum recoverable from him.

CHAPTER V.

PERMANENT PERGUNNAH RATES OF RENT.

CHAP. V. Lord Cornwallis, in the regulations of the permanent settlement, framed (Chap. IV, para. 5) the sections which prohibited the levy of fresh *abwabs*, upon the Report of the Select Committee of Secrecy appointed in 1773 by the House of Commons to enquire into the state of the East India Company. His Lordship followed an earlier model in his determination that the pottah should guide the payment of rent by the ryot to the zemindar. On the 16th August 1769, the President and Select Committee wrote:—

XVI, 4, i. For the ryot being eased and secured from all burthens and demands but what are imposed by the legal authority of Government itself, and future pottahs being granted him specifying that demand, he should be taught that he is to regard the same as a sacred and inviolable pledge to him that he is liable to no demand beyond their amount. There can, therefore, be no pretence for suits on that account—no room for inventive rapacity to practise its usual arts.

The ryot, too, should be impressed in the most forcible and convincing manner * * that our object is not the increase of rents or the accumulation of demands, * * but to secure him from all further invasions of his property.

2. Lord Cornwallis, Sir John Shore, and the Regulations of 1793, proceeded on this model.

I.—LORD CORNWALLIS—

XVI, 9, iii. (See extract in Chapter IV, para. 3, IIIe) “whoever becomes a proprietor of land after these pottahs have been issued, will succeed to the tenure under the condition, and with the knowledge, *that these pottahs are to be the rules by which the rents are to be collected from the ryots.* By granting perpetual leases of the lands at a fixed assessment, we shall render our subjects the happiest people in India.

X, 6, ii. It is with pleasure we acquaint you (Court of Directors) that throughout the greater part of the country specific agreements have been exchanged between the landholders and the ryots, and that where these writings have not been entered into the landholders have bound themselves to prepare and deliver them by fixed periods. We shall here only observe that under the new arrangements to which we shall presently advert, the ryots will *always* have it in their power to compel an adherence to these agreements by an appeal to the Courts of Justice *whenever* the landholders may attempt to infringe them.

II.—SIR JOHN SHORE—

CHAP. V.

When the jumma of a ryot has been ascertained and settled, he shall be authorised to demand a pottah from the zemindar, or person acting under his authority, &c., and any refusal to deliver the pottah shall be punished by fine proportioned to the expense and trouble of the ryot in obtaining it. That the zemindar be not authorised to impose any new *abwab* or *muthote*, on any pretence whatever, upon the ryots.

III.—REGULATION VIII OF 1793—

The impositions upon the ryots, under the denominations of *abwab*, *mahtoot*, and other appellations, from their number and uncertainty, having become intricate to adjust, and a source of oppression to the ryots, all proprietors of land and dependant talookdars shall revise the same in concert with the ryots, and consolidate the whole with the *assul* in one specific sum. "The work to be completed for the whole of the lands in the zemindaries" by the end of the Bengali year 1198 in Bengal districts, and of the Fusli and Wullaity year 1198¹ in the Behar and Orissa districts, these being the periods fixed for the delivery of pottahs, as hereafter specified. No actual proprietor of land, &c., shall impose any new *abwab* or *mahtoot* upon the ryots, under any pretence whatever.

3. From these extracts in paras. 1 and 2 we gather:—

I. The President and Select Committee of 1769 considered that the pottah to be issued to the ryot would be a sacred and inviolable pledge to him of the amount of rent permanently payable by him, so as "to secure him from all further invasions of his property."

II. Lord Cornwallis regarded the pottah in the same light. "Whoever becomes proprietor of the land after these pottahs are issued, they will be the sole rule for the recovery of rents from the ryots."

III. Sir John Shore, in the same spirit, required, for ensuring the permanency of the rent, that the amount payable by the ryot for his holding should be entered in the pottah in one consolidated sum. This form of stating the rent precluded its increase from a rise of prices.

IV. The regulations of the decennial settlement enjoined the delivery to the ryots by 1792 of pottahs stating in one specific sum for each holding the amount payable by the ryot, and simultaneously prohibited the levy of fresh *abwabs*, the only form of impost by which increase of rent beyond the ancient established pergunnah rate had been levied till then on account of a rise of prices.

V. Thus, one and all of these authorities indicated that the ryot's rent, as entered in the pottah in a specific consol-

¹ Christian year 1792.

CHAP. V. idated sum, was to be the permanent rent; also, that it was to be an extra security to the ryot of that right of property in his holding which existed independently of the pottah.

VI. And as the period fixed for the delivery of pottahs was the year 1792, it was a part of the new zemindary settlement, with its bestowal on zemindars of, till then, unheard-of privileges, that the rent payable by ryots should, before the proclamation of the permanent settlement, have been recorded in pottahs, without power to zemindars to increase the rent thereafter on any pretence whatever.

VII. With a rent thus permanently fixed, first, for the ryot, a proclamation of the zemindars as actual proprietors of the soil could not have involved any encroachment upon ryots' rights. The zemindar's property would have been carved out of the Government's (outside the ryot's fixed) share of the produce of the soil.

XVI, 32 & 33. VIII. This was the intent of the authors of the permanent settlement; and with the execution of this intent there could not have been any confiscation of rights of ryots.

4. Thus, and from the extracts in Chapter IV, para. 3, it is evident that the amount of established pergunnah rate of rent, *plus abwabs* of 1793, imposed on the ryot by the Regulations of that year, was a permanent rent, which was to remain fixed at that amount for ever, exactly in the same way as the rent payable by the zemindar.

XVI, 24 to 27. 5. It was, too, in the nature of a pergunnah rate established by ancient custom, that it should not be liable to increase. It is the practice of the majority which determines custom; and the great majority of the cultivators were the khoodkashts, who paid the maximum pergunnah rates; *1stly*, it was not to their interest to vary the custom by consenting to higher rates; *2ndly*, the pykasht ryots, or non-resident cultivators, were enjoying less than the pergunnah rate, with liability to enhancement up to that rate, and no higher;—it was clearly against their interest to pay more than the pergunnah rate; *3rdly*, the cultivators of land newly reclaimed from waste had the advantage of favourable rates to induce them to cultivate;—they, too, were assured by immemorial custom of immunity from more than the pergunnah rate, and it was not their interest to conform to a still higher rate.

6. Or, as stated in Appendix XX, para. 15, v:—In 1793, and for the several generations during which the pergunnah rates had acquired the sanctity of ancient custom, there was

a competition of zemindars for ryots; the *custom* of the pergunnah rate was necessarily imposed, therefore, by the ryots, who were in myriads; not by the zemindars, who were few. The latter could not create the custom; the former, perforce, would not destroy it. The resident cultivators had a right to take up land in their own village at the customary rate, and non-resident cultivators were attracted to the village only by less than the customary rate. The zemindars, too, were not entitled to raise the pergunnah rate, either under the custom till 1793, or under the Regulations of that year. Where, thus, there was no way of enhancement of the pergunnah rate, unless through violence or oppression by the zemindar, it was natural that the Regulations of 1793 should treat the pergunnah rate as permanent.

7. But the authors of the permanent settlement did not rely for the permanent continuance of the pergunnah rate at its amount in 1793 solely on the consideration that the ryots, who determined the custom which fixed the rate, would not raise the rate over their own heads. There was a further well-conceived security, if only the pottah regulation had been carried out, namely, that the several dues of the ryot should be consolidated in one demand, and be converted into a money amount of rent for the ryots' holding, which specific sum should be entered in the pottah as the amount thereafter payable by the ryot. So concerned were the authors of the settlement to reduce the entry in the pottah to a fixed amount of money, that even in the case of a rotation of crops, where the rent varied each year with the crop, they counted upon the zemindar and ryot coming to an agreement for entering in the pottah the amount of annual average rent for the whole term of the rotation of crops, as the rent permanently payable by the ryot. XVI, 17.

8. Money rents had prevailed in Bengal at least from the time of Akbar, and it is of the nature of a money rent, when it is fixed for even several years, only, that it ceases to represent the value of a fixed proportion of the year's produce. Where such fixed proportion of the produce is taken as rent at the current price, the amount taken varies yearly with the quantity of produce and with the market price; that is, the risks of bad seasons and of low prices are shared by the zemindar. Where, however, rent is fixed at an amount of money which does not vary from year to year, its character is changed; it ceases to be a fixed proportion of the produce of each season, and in course of time, as prices alter, it XX, 15.

CHAP. V. represents less and less the old proportion of the yearly produce in days when the rent was taken in kind and was commuted at the current price of the year. At the same time rent payable for a number of years, at a fixed amount of money, is not liable to enhancement from a rise, or to reduction from a fall, of prices. Hence, the enactment in the Regulations of 1793, that the ryot's rent should be entered in a pottah, in a specific amount of money, and that this amount alone should be recoverable, thereafter, from him, implied that the rent did not represent the value of a fixed proportion of the produce, and that it was not liable to increase on account of a rise of prices; in short, it implied that the proportion of the produce belonging to the zemindar should vary inversely with the rise or fall of prices;—the assumption which underlies the reasoning of the fourteen judges in the Great Rent Case was in the teeth of this clear inference from the fact that, from a time long prior to the British rule, money rents prevailed in Bengal, and from the condition imposed on the zemindars in 1793, with their other obligations, that they should clearly specify in pottahs the fixed money amounts of rents payable by the ryots. In other words, the Regulations of 1793 provided a permanent settlement for the ryot, when they limited the demand upon him to the established pergunnah rate of rent, *plus abwabs* of 1793,—required the consolidation of these dues in a specific amount of money,—and directed the insertion of this amount in a pottah which was to be the sole guide, standard, or instrument, for the recovery of rent from the ryot.

9. Having ascertained *1st*, in Chapter IV, that the established pergunnah rate of rent constituted, from 1793 to 1859, the maximum rent payable by the ryot, and *2nd*, in this Chapter, para. 4, that the custom on which rested the established pergunnah rate was not varied by ryots raising the rent over their own heads, while zemindars had no legal power of raising it; *3rdly*, that the pottah and other Regulations of 1793 prescribed a permanent assessment for the ryot,—it follows that the legal status of the ryot from 1793 to 1859 was one of immunity from enhancement of rent beyond the pergunnah rate of 1793, *plus abwabs* of that year. The ryot's actual position was indeed different from his legal status, owing partly to the inefficiency of the police, the corruption of the courts, the weakness of the executive, but principally to the wrong-doings of zemindars. But as
 XVI, 32, no man should be allowed to profit by his own wrong, both

zemindar and Government are bound to accept the legal status, instead of the actual condition, of the ryot from 1793 to 1859. That status, as we have seen, was one of immunity from enhancement of the rate of rent which obtained in 1793.

10. It follows that two capital errors pervaded, respectively, the legislation of 1859 and the decision of the fourteen judges of the Full Bench of the High Court in the Great Rent Case in 1865; *1st*, the provisions in Act X of 1859 which enabled a zemindar, on certain grounds specified in the Act, to enhance generally the rents in his zemindary beyond the ancient established pergunnah rates, were a violation of the permanent settlement with the ryot; *2nd*, the fourteen judges in 1865 based their judgment on the assumption that the money amount of rent paid by the ryot represented the value of a fixed proportion of the produce of the soil, and that accordingly, the ryot was liable to pay an increased rent, on account of an ascertained rise of prices, in the proportion which the new scale of prices bore to the old scale. This assumption, we have seen, was at variance with the Regulations of 1793; and this fundamental error vitiated the ruling of the fourteen judges, which, thus wrong in law, has also proved unworkable in practice.

CHAPTER VI.

PERMANENT SETTLEMENT BROKEN IN 1859.

P. VI. The Regulations of 1793, adhering to the intentions of the authors of the permanent settlement, prescribed a permanent assessment for ryots; the legislators of 1859, on the other hand, laid down rules for a general enhancement of ryots' rents to amounts known to be beyond the ancient established rates which existed in 1793. How was this change brought about? and that too by legislators who were so very well pleased with their own benevolence towards the ryots, that they broke out into a chorus of self-gratulation, while one of them assured the author of Act X of 1859 that "The Bill, if passed, would benefit all those who in this country were connected with the land; that is, it would benefit about thirty millions of people. That was a pleasant thought for the Honorable Member to put under his pillow and go to sleep upon in a snug little room in the old country." Judging by results, however, uneasy must lie the head which wears a crown made up from Act X of 1859.

X, 20, iii. XI, 15. 2. The wide departure in 1859 from the legislation of 1793 is easily explained; in that long interval of lawlessness, zemindars, gomastahs, and middlemen, had been educating their rulers, by teaching them, as they had also taught the ryots, the uselessness of kicking against the pricks. The lesson was conveyed through oppression of the ryots. Oppression marches with no halting steps, and that practised with the help of *Huftum* and *Punjum*, of a corrupt police, and of corrupt subordinates in the civil and criminal courts, was high-handed; but still the lesson, though readily learnt by and deeply impressed upon the ryots, was more slowly apprehended by the Government. The education by zemindars, &c., of their rulers was more gradual; the murmurings of the unquiet conscience of the rulers, on account of broken pledges to ryots, were not silenced until one generation had passed away, giving place to another of a more docile disposition, that is, more disposed to acquiesce in accomplished facts which it had not helped to bring about. Thus:—

I.—MR. COLEBROOKE (1812)—

X, 3, *id.* I am disposed, therefore, to recommend that, late as it now is, measures should be taken for the re-establishment of fixed rates, as nearly

conformable to the anciently established ones as may be yet practicable, CHAP. VI.
to regulate distinctly and definitely the relative rights of the landlord
and tenantry. —

II.—BENGAL GOVERNMENT (*1st August 1822*)—

It was, we think, clearly intended to render perpetual the rates X, 12, i. existing at the time of the perpetual settlement. The intention being declared, the rule is of course obligatory on the zemindars. * * *

We are not insensible to the disadvantages of fixing rates, though the perpetual adjustment of them might still of course leave rents to vary; but our conviction certainly is, that the custom of the country gives to the ryots rights limiting the right of Government, and that the rights so possessed could not be set aside by the supreme authority without the imputation of injustice.

III.—COURT'S REPLY TO PRECEDING (*10th November 1824*)—

It is in the highest degree important that your design of adjusting the rights and interests of the ryots in the villages as perfectly in the Lower as in the Upper Provinces should be carried into effect. The doubts we have expressed as to the sufficiency of the Collector's agency will receive from you a due degree of attention. * * Should you succeed in securing to the ryots those rights which it was assuredly the intention of the permanent settlement to preserve and maintain, and should you, in all cases where the nature and extent of those rights cannot now be satisfactorily ascertained and fixed, provide such a limit to the demand upon the ryot as fully to leave them the cultivator's profits, under leases of considerable length, we should hope the interests of that great body of the agricultural community may be satisfactorily secured.

3. In the next generation all this was forgotten; the high-handed oppression by zemindars (Appendices IV, VII, X, and XI),—continued for more than fifty years,—had deeply impressed the Government with their power, insomuch that if any members of the Government wrote law with a big L, like Sir George Campbell, still, like him, they had more respect XX, 16. for the zemindar's power than trust in the power of the law. As observed by Sir George Campbell, the powerful zemindar "could do much without law;" and Sir Frederick Halliday began the correspondence which issued in Act X of 1859 by quoting, with approval, for its applicability to XIX, 23, i. the Lower Provinces generally, the testimony of a district officer: "The curse of this district is the insecure nature of the ryot's land tenure. The cultivator, though nominally protected by regulations of all sorts, has practically no rights in the soil. His rent is continually raised; he is oppressed and worried by every successive tickadar, until he is actually forced out of his holding, and driven to take shelter in the Nepal Terai."

CHAP. IV.

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4. The discussion began thus with deep sympathy for the ryot; but past official correspondence, of the tenor of that of the extracts in paragraph 2, was clean forgotten, and had dropped out of the official mind. Mr. Sconce, with a sagacity in which he stood alone among his contemporaries, did indeed write:—

XIX, 18, ii g.

“We offend utterly against the broadest and deepest justice, and considering the character and operation of the permanent settlement, I will even say against our constitutional law, if we depreciate and sink out of sight the rights and property of resident cultivators, and elevate at their expense mere middlemen invested with power to absorb as increasing rent whatever substantial profit the land and labour of the ryot and improving markets may in the progress of time yield. It cannot be our deliberate purpose that the jumma of everybody should be fixed, but the jumma of the khodkasht ryot; that the sudder jumma should be perpetually unalterable, and so the jumma of a talukdar, and the jumma of one or more in succession to him, and yet that season by season, like a ripe fruit, the ryot should be pecked at till the stone be bared.”

5. Mr. Sconce thus went to the root of the matter; but even he seemed not to know the strong support which he could have found for his views in the extracts which have been cited in this and preceding chapters, from writings of the authors of the permanent settlement, and of authorities who were in a position to know that the purpose of that settlement was to ensure the same permanency for the assessment of the ryot as for that of the zemindar. Certainly the statement of this fact lost nothing in strength or point, as it flowed from Mr. Sconce's pen: the utter failure of the purpose of the authors of the permanent settlement, and the complete subversion of the grounds on which they had justified and enforced the alienation of what has proved to be some millions sterling of public revenue, cannot be more pointedly stated than in Mr. Sconce's remark that the Regulations of 1793 have resulted in fixing a permanent assessment for the zemindar, and for several grades of middlemen, but not for the ryot. A permanent settlement which was designed to extend and improve cultivation, and to promote the happiness of millions of the people, has fixed permanently the assessment of the zemindars and of numerous middlemen, who have successively pecked at the cultivators or ryots, but it has left the cultivators' rents unsettled and subject to incessant enhancement.

6. As already observed, no one followed Mr Sconce in discussing the important issue which he raised of a per-

manent settlement for the ryot: no one enquired whether the faith of Government had not been pledged to the ryot in 1793 to give him such a settlement; and no one seemed to be aware that this pledge and obligation of Government had been distinctly recognised by later Governments as one of the unfulfilled but bounden duties of the State, in which the honour and good name of English rule were concerned.

CHAP. VI.
XIX, 25.

X, I, iv α.
X, I, vii.

7. The subject was settled in a spirit of compromise; *Huftum* and *Punjum* were to be repealed; the police was to be reformed, more deputy magistrates were to be appointed, so as to bring justice nearer to the poor. The underlings in the courts were not, as yet, to be reformed; but still it was hoped that much would be done to deprive the zemindars, &c., of facilities of high-handed oppression. At the same time, the enhancing of rents, whether directly or in the form of *abwabs*, had become a second nature for middlemen and zemindars' gomashahs, and they were allowed, therefore, to obtain their old excitement, but in a more legitimate way, under colour of a new-fangled law, which the legislators had to borrow from the temporarily-settled North-Western Provinces. In those provinces, when the zemindar's rent is raised in proportion to a rise of prices, perforce his ryots' rents must be raised in the same proportion, to enable him to pay his new rent. But this consideration was wholly inapplicable in the Lower Provinces, where the zemindar's rent is not subject to enhancement from a rise of prices. The regulations of the permanent settlement fixed the zemindar's rent for ever, at the amount paid in 1793; and in limiting, simultaneously, the rent payable by the ryot, to the pergunnah rate of 1793, they consistently withheld from the zemindar a power which he had not till then enjoyed, of raising ryots' rents beyond the pergunnah rate, on account of a rise of prices, seeing that his own rent was not to be raised on that account.

8. When once the idea was entertained of a compromise, that is, a compromise of the rights of ryots whose voice was not heard in the Legislative Council, the legal status of the ryot from 1793 to 1859 was put aside, and scope was afforded to legislators to let their ideas run riot, about the fitness of things.

I. The author of the Bill led the way of departure from the compact with the ryots in the permanent settlement. The Regulations of 1793 prescribed that the ryot

CHAP. VI. should not pay as rent more than (variously) (1) the established pergunnah rate (2) according to the established rates and usages of the pergunnah, (3) rates established in the pergunnah for lands of the same description and quality as those respecting which disputes between zemindar and ryot may arise. We have seen that by these expressions, and by the directions for entering in the pottahs which were to have been granted to the ryots before proclamation of the zemindary settlement, the specific amount, in money, of the rent ever after payable by the ryot, it was implied that the established pergunnah rates were immutable rates. Resting as they did on custom, they rested perforce on a custom dating from the past, which was not alterable by a custom to be created in the future, seeing that the ryots who had created the customary rate would not vary the custom so as to raise the rent over their own heads. Yet the Bill introduced in 1855, which, with amendments, was passed into law as Act X of 1859, provided that "hereditary ryots holding lands *at fixed rates of rent*, are entitled to receive pottahs at those rates. All other ryots and cultivators of land are entitled to receive pottahs according to the rates of rent *for the time being* established in the pergunnah." The phrase "*for the time being*" (which meant, a rate increasing from time to time after it had been accepted in 1793 as a settled pergunnah rate established by ancient custom) was not warranted by the Regulations of 1793;—nor was there any warrant for using the term "fixed rents," as in contradistinction to the rent payable by khoddkasht ryots at the (legally immutable) established pergunnah rates of 1793. As, in 1859, fifteen-sixteenths of the ryots held without pottahs, but in accordance with custom, that is, held without any document specifying a fixed amount of rent, this form of expression disestablished nearly all the ryots in Bengal.

XIX, 18, ii. II. Even Mr. Sconce, who had so clearly asserted the ryot's title to a permanent assessment under the Regulation of 1793 (necessarily at the established pergunnah rate of that year), was drawn into speaking of "fair rents" instead of established pergunnah rates; while the Select Committee XIX, 22, iv. which settled the Bill as it was finally passed into law, imported from the North-Western Provinces the expression "fair and equitable rates." The use of "fair rent" and "fair and equitable rates" as substitutes or equivalents for the "established pergunnah rates" of the Regulations of 1793, implied a confusion of ideas, the confounding of rent

with revenue, which the Court of Directors had rebuked in the passage quoted in Chapter III, paragraph 11, iii. As pointed out by the Court, what the ryot paid was revenue, not rent. CHAP. VI.

III. The distinction was material. Revenue can be increased only according to the exigencies of the State, not at the discretion of individuals; and, at the permanent settlement, the State surrendered all claim to increase the revenue from land, whether from a rise of prices or any other cause. Having exempted the revenue paid by the zemindars which they collected from the ryots (that is, the revenue paid by the ryots) from increase on account of any exigency of State, the Government proceeded, in the Regulations, *1st*, to limit the demand upon the ryot to the established pergunnah rate, *plus* cesses, of 1793; *2nd*, to prohibit the levy by zemindars of fresh *abwabs*. The limitation and the prohibition were justified, and indeed called for, by the limitation of the Government's revenue from land. The established pergunnah rate payable by the ryot was an immutable rate derived from a custom of long standing; the amount payable at that rate was a *question of fact*, determinable by reference to the custom in each locality. In determining it there was no room for *opinion*, such as is afforded by the use of the words fair and equitable.

IV. Had the ryot's payment been rent and not revenue, it would then have been liable to increase, not alone for meeting exigencies of the State, but for meeting additional demands of a landlord, supposing that the zemindar were the ryot's landlord. In such case, the limit of the demand might be determined by considerations of what was fair and equitable. But the ryot, as we have seen in a previous chapter, was the proprietor of his land; his was the dominant, and the zemindar's was the servient right. In accordance with this fact, the Court of Directors correctly observed that what the ryot paid was revenue, and not rent. This confounding with rent of the revenue payable by the ryot has led to the subsequent obscurity and difficulties in the substantive rent-law. In the first place, it imported into the law the expressions "fair and equitable," which attach to ideas of rent; and by a re-action the idea of rent got firmly lodged, *1st*, in the mind of the Legislature in 1859, which exhausted ingenuity in devising grounds for enhancing that rent which the Regulations of 1793 had determined to be payable at the amount prevailing in that year; *2nd*, in the mind of judges of the High Court, among whom Sir Barnes Peacock the

CHAP. VI. driven to Malthus' Political Economy to find out what
 — Lord Cornwallis meant in 1793; and 3rd, in the mind
 of the Bengal Government, which not long since was
 disposed to believe that a great deal which passes man's
 XIX, 16 to understanding is necessary for knowing what rent a Bengal
 18. ryot should pay to his zemindar.

9. It may be said that the expression "fair and equitable rates" was adopted because the established pergunnah rate had been obliterated, and some standard for determining the amount payable by the ryot was necessary; but—

I. The fact remains that the use of the expression involves, and has created, a confusion between revenue and rent, as payable by the ryot, with the results above indicated.

II. The obliteration of the pergunnah rate was no reason for adopting a new standard of payment by the ryot, the permanency of whose assessment, as it existed in 1793, was as solemnly guaranteed to him as the similar assessment of the zemindar was guaranteed to the latter. If the pergunnah rate was obliterated, at least it was known, or was easily susceptible of proof, that the rent paid in 1859 was higher than the established pergunnah rate paid in 1793. Fidelity to the solemn pledge given to the ryot in 1793, required that he should at least have been secured from paying more than the rent which was being paid in 1859, and that a new standard should not have been devised for regulating the zemindar's departure in a fresh career of enhancing ryots' rents and reaping profit from his own wrong-doing in the obliteration of the permanent rate.

III. If, notwithstanding the permanency of assessment at the amounts of 1793, which was assured to the ryot, it was proper, in violation of the deed of the permanent settlement, that his rent should be increased to fair and equitable rates, thereby securing to the zemindars an increase of income which had not been contemplated for them in 1793 by the authors of that settlement;—then it was barely just to the tax-payers in British India that, in consideration of this increase of zemindars' income from a source outside the deed of their permanent settlement, their own assessment should be increased, in like manner, to fair and equitable rates.

10. The two cardinal privileges of ryots before the permanent settlement were, 1st, that they could not be disturbed in possession so long as they paid the established customary revenue; 2nd, that resident cultivators and their descendants

could take up waste land in their own villages subject to payment of the established pergunnah rates of rent for land of the same kind. These privileges were secured by immemorial usage or custom: and both these, with an assurance of permanency of rent, were continued by the permanent settlement. Act X of 1859, we have seen, abrogated the first of these privileges, by importing into Bengal a law suitable for the temporarily-settled North-Western Provinces, which was inapplicable to permanently-settled Bengal. It also rescinded the second privilege, under which the class of resident cultivators had continued to receive yearly accessions. This second breach of engagement with the ryot was brought about by again importing from the North-Western Provinces a law which in those provinces had favoured the growth of occupancy rights among non-resident cultivators. The result in Bengal was that the ancient division of ryots into two classes of resident and non-resident cultivators ceased, and that of occupancy and non-occupancy ryots was substituted. The whole contention of the zemindars against the ryots had been to discontinue their residence; and in 1859 the law helped the zemindars by abrogating the privilege that had attached to residence under an immemorial usage which the regulations of the permanent settlement had continued in obedience to the command of Parliament. Under that custom a resident cultivator, or the offspring of a resident cultivator, had an indefeasible right to take up waste land in his village, paying for it the established pergunnah rate. The zemindar could not hinder him;—but under the new law he can be hindered by the zemindar, or if the latter allows him to cultivate, still, by varying his rent in less than twelve years, the zemindar prevents the growth of occupancy right in the ryot. Thus, the old class of occupancy ryots, who were independent of the zemindar, must become extinct; while the hybrid class, modelled on a very different condition of things in the North-Western Provinces, are less esteemed, as creatures of Act X of 1859, whose occupancy right can mature only on sufferance from the zemindar. Thus, the tendency of the legislation of 1859 is to reduce, in time, all ryots to the position of tenants-at-will, or tenants by permission of the zemindars; in other words, excepting those engaged in the professions of law and medicine, and in mercantile or banking pursuits, and excepting handicraftsmen and labourers, the entire population of Bengal, a country almost entirely agricultural, will in time consist of servants of Government,

CHAP. VI. or servants or dependents of zemindars. Mr. Froude observed—respecting Ireland—“The good landlords, it may be said, are few, and whether good or bad, free men ought not to be at the mercy of mortals. A free man should own no master but the law of his country, and depend on nothing but his own industry.”

XIX, 33.

11. Act X of 1859 brought about another change which is prolific of evil fruit to this day, by facilitating indirect suits for enhancement of rent, in a form which the zemindars often find more convenient and advantageous than a direct suit for that purpose. After the Regulations of 1793, the zemindars turned their obligation, under those Regulations, to grant pottahs to ryots, into an engine of oppression. Forgetful of this part of the history of the relations between zemindar and ryot, the Legislature in 1859 gratuitously empowered zemindars to demand kabulyuts from ryots. This power affords to zemindars the same advantage as if they could force pottahs upon ryots.

XIX, 39 &
40.

12. Thus, the legal status of the ryots, as fixed in 1793, and as it remained unaffected until 1859, was altered in three vital points, by Act X of that year, without the least discussion of the change, though Mr. Sconce had pointedly drawn attention to the assurance of a permanent assessment which was given to the ryots in the Regulations of 1793. There was eager strife in the Legislative Council, whether the Civil or the Revenue Courts should have the body of the ryot, but his legal status did not receive the slightest notice, and it was seriously altered for the worse without the least discussion, and without any reference to what had been recorded by greater authorities than those in the Legislative Council in 1859. This was not a nice thought for any Honorable Member to put under his pillow and go to sleep upon in a snug little room in the old country; it would give less pain to put a scorpion there instead.

CHAPTER VII.

BARREN RESULTS OF THE PERMANENT SETTLEMENT.

Act X of 1859 broke the deed of the permanent settle-
ment against the ryot, among other ways, by introducing a
new standard of the rent payable by him, though the Regu-
lations of 1793 had assured to him a permanency of the
assessment of that year. The legal status of the ryot from
1793 to 1859 was one of immunity from enhancement of
rent. Through the high-handed oppression of zemindars,
down to near modern times, this immunity was set at
nought, and ryots' rents were increased; but still, the force
of custom, the ever-surviving law of the East, is strong;
and the sense of ryots' rights under the Regulations of
1793 must have moderated, in a measure, the exactions by
zemindars.

CHAP. VII.

2. Act X of 1859 destroyed this restraining force of
custom; breaking, to the ryot, a pledge under the perma-
nent settlement, it empowered zemindars to demand legally
an increase of rent, in circumstances in which, till then,—on
account of the since broken pledge,—they could not have
demanded it legally, or without violence to custom. So far
as the law formed a standard for the zemindar's conduct,—
where formerly he laboured with an uneasy conscience, he
could now engage with a clear conscience in proceedings for
enhancing rent. Accordingly his demands under the law
would be more unrestrained than his previous demands be-
yond the law. This feeling was strengthened by the great rise
of prices since 1854; and thus it came about that, whereas
formerly the increased demand had some regard to past
usage, the new demand had none. This outraged the ryots'
sense of equity, and increased the difficulties which embar-
rassed the courts in arriving at a satisfactory judgment on
disputes about rent.

3. An unusual, special effort was made to obtain, through
the Great Rent Case, a satisfactory rule of enhancement of
rent, but the result was disappointing. Sir Barnes Peacock
had passed, and in the Great Rent Case he upheld, a decree
which adjudged to the zemindar a rent so high that the latter

CHAP. VII. would not enforce his decree. Sir Barnes erred from having regarded the ryot as reduced, by the Regulations of 1793, to the condition of a mere tenant-at-will. The other fourteen judges were unanimous in another decree which put Sir Barnes Peacock into a minority of one, but which, like his decision, has also proved to be unworkable. The fourteen judges erred in considering that the ryot's rent, though fixed in a money amount, represented the value of a fixed proportion of the produce of his land. The fallacy of this view has been exposed in Chapter V, para. 7, and in Appendix XX, 15. The result of these two unworkable decisions is that neither zemindar nor ryot can tell what the ryot should pay as rent.

4. Among the results of Act X of 1859 we may note:—

I. The broken faith of Government, which was as solemnly pledged to the ryot as to the zemindar, for a permanency of assessment.

II. Destruction of a custom which from time immemorial had secured to resident cultivators occupancy rights in their own village.

XIV. III. Multiplication of middlemen, who, when mere farmers of rents, are the scourges of the ryots of Bengal.

IV. Increased expense to zemindars for enlarged village establishments, *1st*, for preventing the growth of occupancy rights; *2nd*, for the frequent enhancements of rent which have been caused by the Act.

V. Increased rents laid on ryots, who have to bear, in addition, increased exactions by the larger village establishments which zemindars now keep.

VI. Increased litigation and heavy law expenses to the ryots, of which the smallest part is that incurred in court for stamp duties and pleaders.

VII. Uncertainty, amounting almost to impracticability, of application of the rent law, *i.e.*, a present deadlock between zemindar and ryot as regards rent, which is a vital point for prosperous agriculture or the reverse.

VIII. A belief among zemindars that they get less than they should from the ryots, and a belief among ryots that they pay more than they should, and a dread that they may have to pay still more, to the zemindars.

5. The Government, in regarding this its handiwork through Act X of 1859, may, if it has thought on the matter, add a bitter reflection that, for no earthly good whatever, from the zemindary settlement, several millions sterling a year of revenue (more than the yearly taxation

for the Famine Insurance Fund) have been added to the debt, zemindars, who yet, as a body, are impoverished, while the condition of the greater part of the ryots in the Lower Provinces is bad. All but the first of the ill effects of Act X of 1859, as detailed in the preceding paragraph, have flowed from the enhancement of rent, consequent on forgetfulness of the pledges of the Government.

6. From the ryot's point of view the retrospect is still more disheartening; all that the Government has lost, he has lost too, and more. Besides four millions sterling (nearly) of land revenue to the Government, the ryots pay above thirteen millions sterling, net income, to zemindars and middlemen; over and above that they pay all the expenses of management and of collection, and formidable amounts of law expenses for both sides, of arbitrary cesses and exactions, and of interest to money-lenders. In exchange for these enormous payments they have a state of things in which the condition of their class, in at least one or two provinces, is wretched, and over a large portion of the population of the Lower Provinces is bad. And who can estimate the further immense loss to ryots from the moral degeneration which is an incident of their material condition?

7. From the point of view of the general tax-payers in British India, the retrospect, if not so saddening as the above, is perhaps more humiliating to the wisdom by which the world is governed. At the time of the acquisition of the Dewanny of Bengal, Behar, and Orissa, by the East India Company, the zemindars were administrators of districts and collectors of revenue. Under British rule they were relieved from duties of administration, but, though separate European collectors of revenue were appointed, the zemindars, in an evil day for Bengal, were still utilised as collectors of revenue. In that capacity they became payers of the Government revenue into the public treasuries; and, by reason of their being these payers of revenue, they were constituted proprietors of the soil, with an allotment of certain perquisites and lands as remuneration for the duties of collecting the revenue; and with a further gift to them of the waste lands of Bengal, which then constituted about one-third of the cultivable land in the Lower Provinces. It was, indeed, hoped that in return for these immense concessions the zemindars would take a preponderating share in improving cultivation. Here and there, they have spent money in digging or filling up jheels and

CHAP. VII. erecting embankments; but the expenditure is as a mere flea-bite out of the enormous millions sterling that they have derived from the land; and the testimony of good authorities, extending over a long period, is, that the zemindars have done little or nothing, the ryots everything, for the extension and improvement of cultivation. Thus it has happened that where the authors of the permanent settlement hoped that the improved cultivation of the land would be the primary, and the collection of revenue the secondary function of the zemindars, the only duties, substantially, which they have rendered for the enormous concessions to them in 1793 have been as collectors of revenue. We have seen that they and middlemen receive above 13 millions sterling, besides expenses of collection and management, from the ryots. This amount, then, and the Government's expenses of collection, with the *abwabs* exacted by zemindars, constitute the real charges which are incurred for the collection of a revenue of only four millions sterling. That is a cheering thought for the tax-payers in British India to put under their pillows and go to sleep upon, in their huts or houses, when they are disposed to feel an ignorant impatience of taxation for providing in Bengal an insurance against famine! and they may couple with it a second thought that the Bengal ryots could not only dispense with help in time of famine, but voluntarily contribute to famine relief in other parts of India, if they were spared the crushing charges of collection which have been gratuitously laid on them since 1793.

8. Need we go into greater detail?

VI, 15, v. I. Necessitous zemindars are the most oppressive landlords—*i.e.*, after the above-mentioned enormous payments by ryots, the cultivators might hope to find themselves under wealthy liberal zemindars; yet it was reported in 1868 that—

XII, 7, ii. the zemindars as a body are not wealthy men. There are *some* rich men among them, a few *very* rich men, but the bulk of the class are men of very limited income, and too many of them of embarrassed circumstances.”

Again—

The vast majority of the estates for which revenue is paid direct to the Government are *petty* properties, and the larger ones are almost all so charged with subordinate tenures of a more or less permanent character, as often to leave the so-called owner with only a moderate annuity.”

II. Five years later, or in 1873, the Board of Revenue CHAP. VII. reported in effect that the condition of zemindars was that of Irish landlords before the Encumbered Estates' Act, while XII, 14. the condition of ryots was that of Irish cottiers; thus:—

“It is not too much to say that, while the ancestral landholders have, by their apathy and short-sightedness, fallen out of the race and lost their share of the growing wealth of the country, the money-lenders have by thriftiness, care, and rapacity that could never have been tolerated by a less patient and indolent race, amassed such riches and such influence as to have become the most powerful class in the community. The condition of the ryot all over Bengal is that of hopeless indebtedness to his mahajnn. The cultivation of the country is carried on upon advances made by them, and the well-being and comfort of the lower classes, and of a large portion of the higher classes also, is in their hands. Fortunately for all parties they are wise in their generation; and though they exact usury at rates unknown in other parts of the world, they know how to adjust their demands to the immediate capacities of their debtors, and so avoid the catastrophe of a general bankruptcy, which would involve themselves.

III. Of one Province, Behar, the Bengal Government XIII, 9, viii. reported in 1874-75 :—

“So far, then, we may hope that the lot of the labourer, which was always very hard, has not become harder of late. But we must sorrowfully admit that it is almost as hard as can be borne. A plain calculation will show that the wages will suffice for little more than the purchase of food, and leave but a slender margin for his simplest wants. In Behar, indeed, a comparison of prices with wages might indicate that his lot must be hard beyond endurance.

The condition of the labourer, in the territories under the Bengal Government, takes its hue from that of the ryots. The Bengal Government added on 7th September 1878 :—

Nearly every local officer consulted is agreed that while a system of summary and cheap rent procedure is required in the interests of both zemindar and ryot, the most urgent requirement of Behar is an amelioration of the condition of the tenantry.

IV. We have seen that the majority of the zemindars are XIII, 8. in debt and are petty zemindars, and wherever this is the case—

the condition of the ryots is bad. They are prosperous in the 24-Pergunnahs, or suburban district of the Presidency division (and in Chittagong), where they enjoy fixed rents; in the eastern districts, where, through intelligence, strength of character, and force of circumstances, they have successfully asserted rights against undue enhancement of rent; in parts of the central districts, and in some northern districts where there is a demand for labour. But elsewhere the condition of the ryots is one of deep indebtedness and poverty.

CHAP. VII. — V. Wherever, through fixity of rents, as in the 24-Pergunnahs and Chittagong, or through exemption from undue enhancement and from rack rents, the ryots are prosperous, wages are high, and labour is efficient. In other parts of Bengal, where the ryots are oppressed, wages are low; they are lowest in Behar, next in Orissa (2 annas a day), 3 annas in Northern Bengal, 4 annas in Central and Eastern Bengal, and 6 annas in Calcutta; and the intensity of ryot's indebtedness is distributed in the same order.

9. This is a melancholy chapter; it tells us of a self-abnegation by Government which gave up some millions sterling of yearly revenue, and that the sacrifice has been useless;—of zemindars and middlemen who divide an income (including cesses) equalling the land revenue of the rest of British India, and of whom, notwithstanding, the zemindars, as a class, are poor and in debt;—of ryots, of whom a large proportion are reduced to cottierism, and a yet greater number are in deep indebtedness, while, of the remainder, only those are prosperous who pay rents as fixed at the time of the permanent settlement, or low rents. We close the chapter with an enquiry of what earthly use to any but the money-lender, and to a very few zemindars, is the existing zemindary settlement? Would not the small minority of ryots who are in tolerable or in good circumstances, have been equally well off, and would not the rest have been better off, without it, seeing that to the great majority of both zemindars and ryots it has brought nothing but indebtedness and impoverishment, notwithstanding an increase of the quantity and of the value of the produce of Bengal, since 1789, manifold greater than the increase of population? Great cities have decayed, not one new city has arisen, in Bengal since the zemindary settlement of 1789.

CHAPTER VIII.

MISTAKES OF THE GOVERNMENT.

But little good has come of the permanent zemindary settlement, notwithstanding the benevolence in which it was conceived, and the rare self-abnegation by which it was accompanied. Through what mistakes of the Government have its benevolence and self-sacrifice proved abortive?

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2. Four years after the acquisition of the Dewanny, the XVI, 4, i. President and Select Committee in Bengal issued instructions to the collectors with the view of eventually concluding a permanent settlement with the ryots. Fifteen years later, Parliament enjoined that permanent rules should be laid III, 5. down for regulating the payments or services due from all classes of landholders. These rules were to be permanent, and they were to be in accordance with the law and constitution of India, as these had been received, with the Dewanny, from the native rule; in other words, the status of the landholders, as fixed by the laws and usages under native rule, was to be perpetuated.

3. The most ancient Indian form of proprietary' right in land, one which law and immemorial usage under native rule had respected, was that of the members of village communities and khoodkasht ryots, who were entitled to hold their lands without disturbance in possession, so long as they paid the ancient customary rate of rent. The authors of the permanent settlement recognised this right of the khoodkasht ryot, and in obedience to the injunction of Parliament, that rights in accordance with the law and constitution of India under the native rule should be perpetuated, they placed on record, in minutes, and in the Regulations of 1793, that the ryots in Bengal, khoodkasht and pykasht, should not be required to pay more than the established pergunnah rates, and that, paying these rates, they should be maintained in their holdings. Furthermore, they directed that the dues payable by the ryot should be consolidated in one specific sum, which was to be the sole amount recoverable ever after from the ryots' holdings.

4. Thus, a permanent assessment for the ryot was made a part of the permanent zemindary settlement of 1793.

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The ample testimony to this effect, in Chapters I to V, leaves no doubt on this point, respecting which only those can be sceptical who would venture to maintain that the members of the Government of Lord Cornwallis and of his successors, including respected and honoured names, deliberately confiscated the rights of the mass of cultivators in Bengal. It was well observed by Sir John Peter Grant in 1840, that "the right to enhance according to the present value of the land differs not in principle from absolute annulment of the tenure." Fully aware of this, the authors of the permanent settlement limited the demand upon the zemindars, in whose favour they created a new property out of the Government's limited share in the produce of the soil; and they directed a similar limitation, to the established customary pergunnah rate, of the demand upon the ancient proprietors of the land, namely, the ryots.

5. They thought that the limitation of the future demand upon the ryot, to the amount then existing, simultaneously with the issue of a proclamation which gave a limited proprietary right in the soil, in only a technical sense, to the zemindars, would secure the former from encroachment on their ancient undoubted privileges. And they strengthened themselves in this belief by a provision in their regulations that the zemindars should grant pottahs to the ryots, setting forth in one specific sum, consolidated from the dues then being paid, the amount thereafter recoverable from each ryot.

6. Their purposes, plans, and precautions, have failed; the ryots in the present day are subject to enhancements of rent in about every five years; through what mistakes was the failure brought about? they were many.

I. The ryot was required to pay his revenue through the zemindar. As pointed out by Lord Hastings (Chapter III, para. II, section I), the zemindar "was thereby invested with the power of compelling, from the several families in the village, the payment of their respective portions of the general contribution, and our acquaintance with the propensities of the natives makes us sensible that such a power is likely to be misapplied in arbitrary and unjust demands."

II. This temptation to an oppressive abuse of power would, in 1793, when the law was weak, have been strong even with zemindars of average qualities; but the persons VI, 13, *iv.* selected by Lord Cornwallis as zemindars were, as a body, worthless characters, unworthy of trust.

III. They were exactly the persons who would turn, as they did turn, into an engine of oppression, the regulations which required them to give pottahs to ryots who had, from immemorial usage, held without pottahs independently of the zemindars. In this mistake Lord Cornwallis erred with knowledge.

IV. Lord Cornwallis' Government knew that the ryots XVI, 9, ii. held without pottahs: and that the only record of the ancient customary rates which determined the payment of their dues was the official record kept by canoongoes and putwarries, who were servants of the Government, not of the zemindars. The canoongoe's office was abolished, and the putwarries were made the servants of the zemindars.

V. This was done before the existent dues of each ryot had been consolidated and entered for him in a pottah stating the specific amount which alone was to be recoverable from him after 1793. Lord Cornwallis did indeed report to the Court of Directors on 6th March 1793—

"We have anticipated your wishes respecting the pottahs to be granted by the landholders to the ryots. It is with pleasure we acquaint you that throughout the greater part of the country specific agreements have been exchanged between the landholders and the ryots, and that where these writings have not been entered into, the landholders have bound themselves to prepare and deliver them by fixed periods:?"—

But His Lordship was grossly misinformed; the Bengal British Indian Association testified in 1859 that, then, fifteen-sixteenths of the ryots in Bengal held without pottahs. The omission to record the amount of rent of each ryot was not unavoidable. In the similar permanent zemindary settlements in the Madras Presidency, and in the Benares Division, the record was carefully made, with the result that the ryots in those zemindaries are to this day protected from enhancement of rent. The same result was secured by like care and pains-taking work in three or four districts in Bengal, a sufficient proof that what was effected there could have been carried out in the rest of the Lower Provinces.

VI. The gift of waste lands to the zemindars in Bengal — in spite of the views of Sir John Shore and the Court of Directors who had deprecated the gift, soon endangered the permanent settlement by enabling those zemindars, who had plenty of waste land to attract ryots from other zemindars by low rents.

VII. To prevent this mischief regulations were passed with the object of pre-

CHAP. letting lands on low rents, except for short periods; but
VIII. they were so ambiguously worded that they were interpreted,
— to the prejudice of ignorant ryots, as destructive of the
ryot's privilege to hold his land permanently if he paid the
established rent.

XI, 9 to 12. VIII. The ryot having been required to pay revenue
through the zemindar (Section I), a principle was set up
that powers of distraint and coercion (without heed of the
hazard to ryots' rights) should be given to zemindars, even
to the extent of summoning ryots to zemindars' cutcherries,
for the sake of the security of the public revenue.

IX. These powers were given when the police was cor-
rupt, and the executive too weak to watch the exercise,—
still less to prevent an abuse—of the powers, under the guise
of which rascality and tyranny spread over the country.

X. The evil of these mistakes was fully apparent in
1812, when Mr. Colebrooke recommended that even at that
late period the rents of the ryots should be ascertained and
fixed, at amounts approximating as nearly as possible to
the established rates of 1793. The evil was again forced on
the attention of the Bengal Government in 1822, when they
stated their intention of having a detailed survey and assess-
ment with the view of fixing the ryots' rents. Had this
measure been adopted at either of these periods, the rents
which might then have been fixed for the ryots would have
been permanent rents greatly below the amounts now paid
by them. The omission to carry out the measure was a mis-
take; and the error was committed with knowledge of what
was the Government's duty in the matter.

XI. The creation of middlemen, on permanent tenures,
down to the third and fourth degrees, and lower, was permit-
ted without stint. There was excuse for the creation of
a class of cultivating middlemen where waste lands had
to be brought under cultivation; but the permission of
numerous grades of middlemen between zemindar and ryot,
on old estates, all of whom, as well as the zemindar, derived
their income out of the ryot's payments, only set in train
so many agencies for repeated illegal enhancements of rent,
beyond the amount warranted by established custom. These
middlemen, or farmers of rents, have proved a scourge of
the country.

XII. A section of the Sale Law of 1811, which entitled
land-purchasers of estates, at sales for arrears of revenue,
to enhance the rents of tenures on the estates, was ambigu-

ously worded. The correspondence which led to the passing of that Act began with a declaration that to prevent frauds by zemindars, the annulling of leases on sale of an estate for arrears of revenue should be greatly restricted. It ended with a law which, by one section of Act XII of 1841 empowered, auction-purchasers of zemindaries to enhance "at discretion" the rents of all under-tenures with certain exceptions. From the ambiguous wording of the exceptions, their scope was misunderstood; and in course of time, erroneous interpretations by the courts so restricted the exceptions as to create a wrong belief that under the Act all zemindars were empowered to enhance the rents of nearly all ryots at discretion. Even had the wrong interpretation of the exceptive clauses of the Act been correct, this exercise of the power should have been limited to sales of estates under that specific Act XII of 1841, and among these, to those estates only the auction-purchasers of which exercised, within a reasonable period after their purchase, the power of annulling tenures under the Act. But the wrong interpretation only generated fresh error.

XIII. The courts came to consider that if auction-purchasers had the power of enhancing rents at discretion, all zemindars necessarily had the same power, though they had it not before 1793, while the Regulations of that year did not confer on them any such power; and thus the fixity of the established pergunnah rates of 1793, which were obligatory on all zemindars, was upset by ambiguous phrases in Sale Laws respecting the general powers of auction-purchasers to enhance rents. It was overlooked that the theory of the Sale Law, from 1793 to 1841, went no farther than this, namely, that to enable the auction-purchaser to pay the amount of Government revenue which was fixed on the zemindary in 1793, he should be empowered to recover from privileged dependent talukdars merely the amount of revenue which their taluks paid in 1793, and from ryots the ancient established pergunnah rates, and no more. The receipts thus assumed, and the rents from resumed lands and from waste lands reclaimed since 1793, afforded ample resources for paying the Government revenue, which remained the same as in 1793; and, therefore, no ground for enhancement, to a rate higher than the pergunnah rate of 1793, was justifiable under Sale Laws which professed to do no more than to place the auction-purchaser in the position occupied in 1793 by the original engager with Government.

XIV. A tacit assumption, however, that the Sale Laws had enlarged the zemindar's power of enhancing rent beyond the established pergunnah rate of 1793, on all estates, including those not sold for arrears of revenue, pervaded the decisions of the courts, insomuch that even Judges of the High Court, in the decisions on the Great Rent Case, sought to explain the general character of the established pergunnah rates, under the Regulations of 1793, by their interpretation of the Sale Laws.

XV. This too prevalent error, and the actual facts of zemindars having, through their power beyond the law, enhanced ryots' rents beyond the established pergunnah rates of 1793, brought about a state of opinion in which all persons, except Mr. Sconce, who took part in the discussions which preceded the passing of Act X of 1859, considered it as a matter of course that zemindars should have the power of increasing ryots' rents, notwithstanding the permanent settlement which was prescribed for the ryot in the Regulations of 1793.

XVI. The crowning mistake was next committed of borrowing the temporarily settled North-Western Provinces' rules of enhancement of rent, which were necessarily inapplicable to permanently settled Bengal. This error was committed by confounding the distinction between rent which the ryot did not pay and revenue which the ryot did pay. Had that distinction been observed, it would have been seen that, though the ryot's revenue or jumma was properly increased on account of a rise of prices where his zemindar's jumma was increased from the same cause, namely, in the North-Western
XIX, 36. Provinces,—the precedent or example was irrelevant in Bengal, where the zemindar's jumma was not increased on account of a rise of prices, or from any other cause.

XVII. A further error was committed in Act X of 1859, viz., that of substituting a hybrid occupancy right for non-
XXI, 3. resident cultivators, for the genuine occupancy right, resting on an immemorial custom, perpetuated by the Regulations of 1793, which had prevailed in Bengal.

XVIII. Law expenses for the ryot were increased in 1862, by allowing the recovery of charge for zemindars' pleaders, as costs of suit, in suits for the recovery of arrears of rent.

7. Of these numerous mistakes it may be said that the earlier ones did not conflict with the plan and law of 1793, that there should be a permanent settlement with the ryot; they show merely how the intentions of Government proved

abortive. In the later errors, on the other hand, especially those of the courts and of the legislation in 1859, there is a tacit assumption that no one could dream of fixity of rent, or a permanent settlement for the ryots: in other words, it was considered the proper thing that ryots' rents should be repeatedly increased, with the result of creating fresh grades of middlemen. The legislators of 1793 went no farther than to affirm a predilection for great zemindars, without encroaching on the rights of peasant-proprietors; the later legislation could not conceive that the cultivators in Bengal, once a country of peasant-proprietors, should have the same tenure as the peasant-proprietors in Europe, or at least fixity of rent, though their status and primitive rights of property once corresponded;—or should be exempt, like the latter, from the scourge of middlemen. Thus it has come about that, whereas the Regulations of 1793 limited the demand upon the ryots to a pergunnah rate established by ancient customs which were formed by ryots, it was reported in 1872-73, of the district of Gya, that “the rates current in the village are varied at the will of the landholder. No one single individual ryot is subjected to an isolated invasion of the village usage,⁶ but a wholesale enhancement upon all brings all to a common level, and such enhancement may take place, as it were, in a single night.” This is the modern interpretation of the ancient established pergunnah rate of rent,—as determined by the custom of ryots, not by the fiat of zemindars,—which the Regulations of 1793 assured to the ryots.

XIII, 7, iv,

CHAPTER IX.

ZEMINDARS AND PEASANT-PROPRIETORS.

CHAP. IX. In the preceding Chapter the mistakes committed by Government in and since the permanent settlement have been enumerated. May we say that one, the greatest mistake, has been omitted from the enumeration, *viz.*, the creation of great zemindars?

2. Lord Cornwallis modelled his scheme of zemindary proprietors on the English system of large landed estates. That system is still on its trial, and it seems to be falling on evil days. But in its best days its success was greatly promoted by the existence, and the increasing growth and prosperity, of large towns, of great manufacturing industries, and generally of manufactures. Moreover, for long, the high price of wheat during the war, and afterwards the Corn Laws, also abuses of the Poor Laws, gave a factitious support to the system of large estates. Even now, the Poor Laws indirectly help land-owners and farmers to work large farms at a minimum cost of labour. Not one of these circumstances which have promoted the success of large estates in England is present in Bengal, where the only compensating circumstance is a large export of agricultural produce which unequally affects its forty-four districts.

3. On the other hand, vicious incidents of that system, which prevail in England and Ireland, have appeared in Bengal, with one or two others of a like character.

XXVIII, 14, 1. I. Mr. Caird was in raptures with the great increase of income of English land-owners, and of the gross annual value of land. But it is also known that the indebtedness of land-owners, which he mentioned in his work in 1850, and the burdens of rent charge on estates, are great. The annual value of zemindaries in Bengal is in like manner very large, and it shows a prodigious increase on the value in 1793; but zemindars as a body are poor and in debt.

VI, 15, iv. There appears to be only too much truth in Mr. J. Mill's remark in 1831, that—

“it may be predicated generally of persons that live upon rent, that they are not saving men. I know no country in which the class of men whose income is derived from rent can be considered as accumulators;

they are men who spend their incomes, with a very moderate portion of exceptions. * * In general, the persons who own rent, and live upon rent, consume it all; that is the rule almost universally with them in India, and very generally, I believe, elsewhere." CHAP. IX.

II. Entails, settlements, and the right of primogeniture create difficulties or impose burdens, which in England check improvements of the land. Similar difficulties are created in Bengal by the sub-division of estates and tenures (or of interests therein without an actual partition of the land) under the laws of inheritance, qualified by the system of joint family property. The consequent complications, in the relations of landlord and ryot, are oppressive to the latter, and unfavourable to economical and improving management of lands. VII, 12.

III. While Lord Cornwallis thought that he was modelling his zemindary system on the English, he really framed it on the Irish system, and thus introduced two special evils which are absent from the English system of large estates. In England there are no middlemen or farmers of rents; the farmers are those who engage in actual cultivation, with the help of capital, either fully sufficient, or so nearly sufficient as to be eked out by moderate loans from banks. The English agricultural system is thus free from two ruthless oppressors of Bengal ryots, *viz.*, middlemen and money-lenders; and this great difference, to the ryot's prejudice is widened by the further difference in the rates of interest. Seven per cent. a year would be considered a high rate in England; while 36 per cent. a year would be a moderate charge to the Bengal ryot by his zemindar or by the money-lender. The lending of money to the ryot by his landlord, at usurious interest, is another material difference in the characteristics of the two systems.

IV. By a legal fiction, similar to that by which Lord Cornwallis turned the zemindars into proprietors of the soil, in a restricted technical sense, the Irish chieftains were recognised as proprietors in a similar sense of the lands of their respective tribes. But the law courts, ignoring the custom by which the land belonged to the tribe at large, regarded the chiefs as sole proprietors of the soil. Precisely the same thing happened in Bengal. In Ireland the results in time were middlemen and cottierism; in Bengal they have been the same: if the ryots have not everywhere been reduced to a state of cottierism, the tendency of the laws, and of the policy of numerous zemindars, if not of zemin-

CHAP. IX. — dars generally, is to reduce them to that condition. In Ireland middlemen have happily well nigh ceased from the land; in Bengal they multiply with every fresh opportunity or prospect of enhancing ryots' rents.

V. In Ireland the tradition among the cultivators that the land once belonged to them, keeps up that resentful feeling towards landlords which is the Irish difficulty. In Bengal there is the same tradition among ryots who have a deep-rooted attachment to the land, and who have not to trace back their traditions for even a century. In Ireland the chronic feeling of resentment is fed by evictions which would not be so freely, if at all, enforced, if the evicted could not emigrate, but remained a burden on the poor rates. In Bengal the struggle is not to evict, but to enhance rent; and enhancement of rent is accepted as the lesser of two evils, the preferable alternative to eviction, for Bengali ryots and their families are not fitted to emigrate by tens of thousands, and there is no Poor Law by which zemindars, possessed of the Oriental Poor Fund, *viz.*, waste lands, could be burdened with their support, as the worse alternative to observing moderation towards their ryots.

VI. A resentful feeling towards zemindars has shown itself more than once in parts of Bengal.

VII. Mostly indebted landlords, oppressive middlemen, many masters over ryots where interests in estates or tenures are sub-divided without an absolute partition of the lands, frequent enhancements of rent, consequent deep indebtedness aggravated by usurious interest, and strained relations between zemindar and ryot,—such are the helps to improved management and cultivation of the land which the zemindary settlement has provided for Bengal.

4. Nor can better things come of a closer adherence to Lord Cornwallis' model. In a regular sequence, high prices during the war till 1815, the corn laws, the outburst of prosperity, on their abolition, which synchronised with the gold discoveries, the long-sustained inflation of prices from a great and progressive expansion of credit, which collapsed in 1873, helped to keep up in England high prices of agricultural produce throughout this century, until 1873. In this long period of continuous prosperity for landlords, rents advanced with a steady progression; but from the characteristic quality of the class that lives upon rents, which Mr. Mill noticed, their expenditure also increased. Settlements, rent-charges, debts, ~~have increased~~ the fixed yearly burdens

on land, in a percentage corresponding in a sensible measure to the percentage of rise of rents. But the remarkable fall in prices of agricultural produce has now continued for several years; the depression of the great manufacturing industries which provide a market for the farmers still prevails; the sources from which farmers were able to provide the long-continued progressive increase of rents have in great measure dried up; there has been a considerable fall of rents, but not sufficient, it would seem, to meet the fall of prices and diminution of markets, for farms continue to be thrown up, and many remain at present without tenants. But the yearly charges which landlords laid as a burden on their estates during the long period of high and advancing rents remain. A break-up of numerous, of course not all, large estates is inevitable. If sold entire, the estates during the present depression, with farmers relinquishing their tenancies, would be sold at a loss, such as would neutralise the expected relief to landlords. The present agricultural distress is most clearly manifested in the difficulty of paying rent; the weight which oppressively handicaps the English farmer in his struggle with foreign competition is rent; and if the sale of estates is to bring effectual relief to landlords, they must be sold in plots large and small, including small lots, to persons who will cultivate their own properties. Selling in this form, landlords will probably realise from the sale of part of their estates sums sufficient, if invested, to make up, with the rent on the remainder of their estates, nearly their present amounts of income. At the same time the old class of peasant proprietors will be revived; and with them the produce of the land will be increased, in accordance with the ample testimony that small farms realise larger returns than large farms; in other words, the conditions of the struggle with foreign competition will be much improved.

5. This apparently should be the result, if, under the blessing of Heaven, England is to retain her heritage among the nations. Taking the progress of land tenures in France as a type of that on the Continent of Europe, at least among the great States, and the richer among the secondary States, one is struck with the divergence between the lines of progress in England and on the Continent. In both, the same forms of proprietary right prevailed in the early histories of the States; *i.e.*, the right lodged in the members of village communities, or in peasant proprietors as individual rights got separated from the joint rights in the commune.

CHAP. IX. In both, feudalism overlaid these rights, and the land, with its heavy burdens; but in a lesser degree in England, where there continued for long a class of sturdy peasant-proprietors, which was recruited from those who from time to time gained enfranchisement from the heavier of the feudal burdens. On the Continent those burdens pressed with steadily accumulating weight until the French Revolution; then there was complete enfranchisement;—feudal rights were simply swept away;—and the peasant cultivators obtained a complete and perfect title as peasant-proprietors. In the other great European States on the Continent, the enfranchisement was later, and it was effected by the act of each State itself, not by a Revolution, but still with the same result as in France.

6. In England the progress of land tenures was very different. The yeomanry who won her liberties for England engaged in the contest, in the same ranks and on the same side with the aristocracy; thereby these latter preserved and increased their privileges and acquisitions, till they became rich and powerful enough to gradually buy out or ex-propriate the yeomen. Thus was brought about in England the aggregation of small farms in large estates, and a disappearance of the class of peasant-proprietors. Feudal burdens ceased in England with the extinction,—they were removed on the Continent by the enfranchisement,—of peasant cultivators. The political and social results of the two systems are that, on the Continent, the cultivators of the land, its peasant-proprietors, are the most conservative force in the State; the fate of the present republic in France trembled in the balance until the peasant-proprietors gave their adhesion to it; and then it received the character of a conservative republic. In England, on the other hand, there is a growing and an alarming severance of the people from the land. Mr. John Macdonell wrote:

XXVIII, 9, “In his celebrated essay on M. de Tocqueville’s book, vi b. Mr. Mill has, with similar prescience, remarked that without a large agricultural class, with an attachment to the soil, a permanent connection with it, and the tranquillity and simplicity of rural habits and tastes, there can be no check to the total predominance of an unsettled, uneasy, gain-seeking commercial democracy.” * * “So in a late debate upon Irish tenures in Parliament, it was argued with unanswerable force by Mr. Gregory, in reference to the tenure now generally prevalent in the island—“There could be no

attachment to the institutions of a country in which the whole of a peasantry existed merely on sufferance; certainly there was nothing conservative in tenancies-at-will, indeed he believed such tenancies to be the most revolutionary in the world." In England, an agricultural class dissevered from the land; on the Continent the cultivating classes proprietors of the land; in which of these will the distribution of land conduce more, and effectually, to the happiness of the people, the stability of the country's institutions, its power of defence, and of making itself respected abroad? As the years roll on, Mr. Caird advises the agricultural population of England to go to Australia, and to leave the land in fewer hands than ever, in presence of monarchies and States mightier than ever;—for his solution of the famine problem is a system of large estates which flourish best when they support on the estates the smallest possible number of people.

7. This may be good advice for the very advanced type of civilisation which sinks the country's good, and is nothing if not cosmopolitan; but agricultural Bengal, with few and poor manufacturing industries, and a population not fitted to emigrate, resembles more the countries on the Continent which are blessed with peasant-proprietors, than England with her large estates, of which there should soon be a break-up into smaller properties, including numerous peasant-properties, if the happiness and prosperity of her people and the conservative forces of the State are to be preserved. Taking Mr. Caird's advice, England's agricultural population went to Australia and the United States in such numbers as to force England to send forth striplings to the battle for the Zulu war; and now England appoints a committee to report on the shrinking of thews and sinews in the British Army. What interminable reporting by military committees there must have been during the decline of the Roman Empire, when the ablest and most energetic of Italy's agricultural population was emigrating; the reports were indeed of no avail against the barbarians, else they would have come down to posterity; but we may be sure that committees submitted able reports which failed to bring able-bodied Roman recruits only because none were to be had.

8. We may sum up:—

1st.—Lord Cornwallis modelled the zemindary system in Bengal on the English system of large estates; the result

CHAP. IX. have been barren of any good, and fruitful in special mischiefs incidental to the system. At the same time the English system which furnished the model is in a precarious state; its best chance of safety is in a renovation through a break-up into smaller properties, principally peasant-properties.

2nd.—On the Continent the cultivating classes are mostly peasant-proprietors, of the class into which Lord Cornwallis would have transformed the ryots in Bengal, if the perpetual assessment for them which he provided in his permanent settlement had been faithfully observed. The peasant-proprietors on the Continent are prosperous; the condition of the ryots in Bengal is bad, except where they pay low rents which have not been greatly increased since the settlement.

3rd.—The ryots in Bengal formed a cultivating class similar in legal status to the peasant-proprietors on the Continent, inasmuch as liability to an established customary rate of rent did not detract, in any essential point, from their status as proprietors. The unnatural forcing of the landed system of Bengal into a conformity with an inapplicable English system of large estates which is now failing in England, has, through subsequent legislation, divested the Bengal ryots of their ancient rights, and subjected them to about quinquennial enhancements of rent, while they are staggering under the burden of the stupendous, almost incredible, payments by them which have been mentioned. Despite their rights, once identical with those of the class who are now peasant-proprietors in Europe, and notwithstanding the permanent assessment provided for them by Lord Cornwallis, it seems to be considered the most natural thing in the world that they should not have fixity of rent.

9. We have traced analogies and contrasts between the zemindary system and ryots' rights in Bengal, and the English system of large estates and the Continental system of peasant-proprietorship in Europe. We may close this chapter with a note of the resemblance between some of the steps in the descent of the Russian peasant to serfdom, and the mistakes—destructive of ryots' rights—which were committed by Lord Cornwallis and his successors in the zemindary settlement.

XXVII, 12 a. I. The Czar granted waste lands to Russian land-owners, as Lord Cornwallis made a similar free gift to zemindars, —then there was a scarcity of labourers and a competition for

them. The same result ensued from both grants, *viz.*, an CHAP. IX.
 endeavour by some land-owners or zemindars to draw away
 cultivators from others. In Russia this caused discontent
 among the land-owners; in Bengal it endangered the security
 of the revenue under the permanent settlement. In both
 countries alike, the remedy adopted was to set aside sum-
 marily a right of the cultivator. In Russia "severe fugitive XXVII, 12 c.
 laws were issued against those who attempted to change
 their domicile, and against the proprietors who should harbour
 the runaways." In Bengal, as a check upon giving land at
 low rents, zemindars were restrained from letting for more
 than ten years, and this was interpreted to the destruction
 of the ryots' right to hold for ever so long as he paid the
 established rent. A little later, from difficulties in paying
 rent, arising partly out of the gift of waste lands, partly
 from other causes, the *Huflum* and *Punjum* Regulations
 were passed, which conferred great powers upon zemindars,
 and the ryots became *adscripti glebæ*.

II. Mr. Wallace writes of Russia in those early days:
 "The force of custom prevented the proprietors for a time from
 making any important alterations in the existing contracts;—" (the same thing happened with the zemindars.) "As time
 wore on, however," exactions increased:—"So far from en-
 deavouring to protect the peasantry from the oppression of *Ibid*, 12 c
 the proprietors, the Government did not even determine by
 law the mutual obligations which ought to exist between the
 two classes;" (precisely in the same way, the government
 of Lord Cornwallis omitted to ensure a record of the specific
 amount of rent payable by each ryot).

III. "Taking advantage of this omission, the proprietors
 soon began to impose whatever obligations they thought fit,
 and as they had no legal means of enforcing fulfilment, they
 gradually introduced a patriarchal jurisdiction, similar to
 that which they exercised over their slaves, with fines and
 corporal punishment as means of coercion." (This describes
 exactly the origin of the *Huflum* and *Punjum* Regulations,
 and the coercion practised by zemindars in their private
 cutcherries under colour of those Regulations.)

IV. "The proprietor could easily overcome any active
 resistance by selling or converting into domestic servants
 the peasants who dared to oppose his will." (In Bengal the
 law did not allow the sale of peasants, but a permission to
 sell would not have been availed of: the refractory ryot
 was soon coerced by other more effectual means, and he was

AP. IX. of more value in a state of predial bondage than the money which he could have fetched if sold as a slave).

V. "To facilitate the collection of the poll tax, the proprietors were made responsible for their serfs. * * These measures had a considerable influence, if not on the actual position of the peasantry, at least on the legal conceptions regarding them. By making the proprietor pay the poll tax for his serfs, as if they were slaves or cattle, the law seemed to sanction the idea that they were part of his goods and chattels." Of Bengal, Lord Hastings observed that the appointment of zemindar as collector of revenue from the ryots invested him with power to oppress, and with a character in which his position as collector was confounded with that of proprietor.

up. III,
a. 11,

VI. "From an historical review of the question of serfage, the Emperor drew the conclusion that "the autocratic power created serfage, and the autocratic power ought to abolish it." Here, the parallel fails, as yet, in Bengal; for there has not been any corresponding declaration by the Bengal Government regarding the restoration of ryots' rights. But the Lieutenant-Governor of Bengal thinks for himself, and has the courage of his convictions; and England will not be less virtuous than the Czar in confessing error and making amends for nigh one century of wrong.

VII, 20.

CHAPTER X.

LIBERATION OF CULTIVATORS IN EUROPE.

From the facts which have been ascertained in previous CHAP. X
Chapters we select four, *viz.* :—

I. Ryots were proprietors of their holdings under the Law and Constitution of India, which the permanent settlement was designed to perpetuate for Bengal.

II. A broken pledge of a permanent assessment for the ryots, to whom the faith of Government was as solemnly pledged as to the zemindars in the permanent settlement with them. Solemnity would have ill becomed the transfer by Government to a few office-holders, mostly worthless characters, of the property of its subject millions ;—but in a compact between rulers and people which assured to the ryots the same permanency of assessment as to the zemindar, there is a grandeur of conception to which the solemnity of the engagement of 1793 was befitting.

III. Over the greater part of Bengal ryots' rights have been destroyed, the zemindars seeming to be regarded as the proprietors of all except a bare subsistence which is left for the ryot.

IV. Ryots in Bengal pay to Government, to zemindars, and to middlemen, more, by at least one-half, than the land revenue of the rest of British India, whilst the population of Bengal is not one-third and its area slightly over one-sixth of the totals for British India.

V. With these, especially with I and III, we may couple a fact not before noticed in these remarks, namely, the notoriously litigious character of the people of Bengal, which shows itself more particularly in the preponderance, in the Civil Courts, of suits connected with rent and land. Nearly fifty years ago, the Select Committee of 1831-32 reported that "the natives of India have a deep-rooted attachment to hereditary rights and offices, and animosities originating in disputes regarding lands descend through generations." The tradition of the ryot's proprietary right in the land is as strong as in 1793 ; but the zemindar's power to enhance rent, a power destructive of proprietary right, is such as

CHAP. X. unheard of in 1793. A deep-rooted, undying tradition is in conflict with facts in 1879. The conflict rages in the civil, and often in the criminal courts, with a bitterness peculiar to disputes about land, with an intensity of hate that, if spread over a great part of Bengal, is a conception of a kind to make the flesh creep; and with results ruinous to both parties, ruinous to the ryots in the degree of the ill-success of a poor man contending against a rich man in a court of law; ruinous to both ryot and zemindar in respect of the corroding effect of hatred on the moral qualities of our better nature. This melancholy strife, continued through three generations, but intensified since 1859, has confirmed the people of Bengal in a habit of litigation which means the play of the worst passions; but under the euphemism of a tax upon litigation we sweep into the public treasury, as the gold into the bank at a roulette table, a flourishing stamp revenue, and thank God for our beneficent, healthful, moral rule of British India.

2. Those who are concerned for the honour and good name of the British rule, and who have imagination and sympathy to realise what must be the baneful influence of the preceding facts on the happiness, and on the social and moral condition, of the myriads of ryots whom they affect, will not gainsay the conclusion that a remedy—full, substantial, real, searching, effective, and thorough—must be found, even if that to be presently suggested should not meet acceptance.

3. In an earlier Chapter, to get a clear view of ryots' rights in Bengal before the permanent settlement, we looked first in the direction of the village communities outside Bengal, and examined their proprietary rights. In like manner, we may find out a way of restoring ryots' rights in Bengal if we look first at what other States have done for the liberation of the same class of cultivators in Europe.

4. The principal examples are afforded by Denmark, Baden, Austria, Prussia, Bavaria, Russia.

I.—DENMARK—

(XVI, 1. The measures of liberation were confined to promoting the purchase of their farms in fee simple, by the peasant cultivators. Mr. G. Strachey reported on 18th December 1869:—

The tenures of Denmark are not the tenures of England. The Danish landlord is not, except as regards his demesne, the complete legal or customary master of his own. To the tenemental lands he

stands, roughly speaking, as did the zemindar to the ryot before the permanent settlement. From another point of view the analogy between the Bengalee and the Scandinavian would be close enough. If the zemindar-proprietor, or tax-gatherer, was not the mildest of masters, the Danish Jorddrot was, till recent times, the scourge of the peasantry. Under his parental love the Danish "bönde," now the freest, the most politically wise, the best educated of continental yeomen, was a mere hewer of wood and drawer of water. His lot was no better than that of the most miserable ryot of Bengal.

What has been changed in Denmark, should admit of as thorough and beneficial a change in Bengal.

II.—BADEN—GRAND DUCHY OF—

The tithes, dues, and various charges with which the land was at one time burdened, were all abolished by law during the period from 1833 to 1848, and compensation awarded to the land-owners for the losses thereby sustained. The burdens were commuted for a capital sum, generally 16 to 18 times the amount of their annual value.

III.—AUSTRIA—

The application of a feudal system to land and labour lasted in Austria till the year 1848, when it was abolished by revolutionary legislation. * * The manner in which this change was effected was by compensation from the State to the great proprietors for the pecuniary value of the feudal rights of which the State deprived them. * * A commission, in which all the great proprietors were fully represented, having calculated the pecuniary value of the feudal rights enjoyed by each proprietor, and the consequent compensation due to each proprietor for the abolition of those rights, presented to the Government its estimate of the total amount. From this estimated total the Government cancelled one-third. * * The result of this arrangement is, that of the total amount of compensation assigned by the Land Commission to the great proprietors, one-third has been altogether disallowed by the State, and one of the remaining two-thirds is raised by a tax levied upon the great proprietors themselves. Virtually, therefore, the compensation they receive for the abolition of their feudal rights is only one-third of their estimated pecuniary value. The great proprietors generally complain of this. But there are, at the present moment, very few of them who are not ready to admit that (despite also of the great inconvenience and heavy pecuniary loss to which they were subjected by the suddenness of the change through which they have passed) that change has been on the whole decidedly beneficial to themselves, as well as to all other classes of the population, from an agricultural no less than from a social point of view.

IV.—FRANCE—

Feudal burdens were abolished in the Revolution with compensation.

CHAP. X. V.—PRUSSIA—

XXVI, 6,
viii.

(a). The edict of 1807 abolished villeinage, without compensating land-owners.

(b). The edict of 1811 set itself to substitute allodial ownership for feudal tenure. Tenants of hereditary holdings shall by the present edict become the proprietors of their holdings, after paying to the landlord the indemnity fixed by this edict. * * We desire that landlords and tenants should of themselves come to terms of agreement, and give them two years from the date of this edict to do so. If within that time the work is not done, the State will undertake it. * * To obtain, therefore, a solid foundation for the work of commutation, and not to render it nugatory by difficulties impossible to be overcome, we deem it necessary to lay down certain rules for arriving at this estimate of the value of the services due from the tenant to the landlord,—and to deduce those rules from the general principles laid down by the laws of the State.

These principles are:—

(1). That in the case of hereditary holdings, neither the services nor the dues can, under any circumstances, be raised.

(2). That they must, on the contrary, be lowered if the holder cannot subsist at their actual rate.

(3). That the holding must be maintained in a condition which will enable it to pay its dues to the State.

From these three principles, and from the general principles of the public law, it follows that the right of the State, both to ordinary and extraordinary taxes, takes precedence of every other right, and that the services to the manor are limited by the obligation which the latter is under to leave the tenant sufficient means to subsist and pay taxes.

(c). What the statesmen did in Prussia in 1811 was this:—they took half (from temporary) or one-third (from hereditary) holdings, of the land possessed by the tenants of Prussia, and handed it over in full possession to the landlords of Prussia. The land occupied by these tenants was land on which, *except in case of devastation and in virtue of a judgment passed by a Court of law*, the Lord of the Manor had no right of re-entry. What the law of 1811 did was to force the Lord of the Manor to sell to the copyholder his manorial overlordship, (that is, his rights of ownership, and to ordinary services and dues from the tenants) for one-half or one-third of the copyhold. By this process he was put in possession of more land than he was possessed of before; what he was deprived of was labour. The tenant lost one-half or one-third of the land he possessed before, but obtained the *dominium directum* as well as the *dominium utile* over the remaining half or two-thirds: what was, however, much more important, he got back the free use of his own labour. The landlord sold labour and bought land; the tenant sold land and bought labour.

(d). A separate edict enacted as a supplementary measure that in the case of hereditary leaseholds, the services and fines may be commuted into rent charges, and these rent charges redeemed by a capital payment calculated at 4 per cent.

(e). After 1811, the most directly retrogressive step was the declaration of the 29th May 1816, which limited the action of the edict of 1811 to farms of a comparatively large size, without abrogating the provisions

of the separate "Edict for the better cultivation of the land," which did away with the constitutional difference between peasant's land and demesne land, and established the principle of free trade in land. By the combined effects of these two principles, the "so-called small folk" whom the latter edict so ostentatiously took under its protection, *i.e.*, the great mass of small holders, who did not cultivate with teams,—were placed at a huge disadvantage, for where their tenures were hereditary, they continued burdened with feudal services and dues; where they were not hereditary, they were evicted wholesale.

(*f*). The legislation of 1850 included a law for the redemption of services and dues, and the regulation of the relations between the lords of the manor and their peasants. This law abrogated the "*dominium directum*," or overlordship of the lords of the manor, without compensation; so that from the day of its publication all hereditary holders throughout the Prussian monarchy, irrespectively of the size of their holdings, became proprietors, subject, however, to the customary services and dues, which by the further provisions of the law were commuted into fixed money rents, calculated on the average money value of the services and dues rendered and paid during a certain number of years preceding. By a further provision these rent-charges were made compulsorily redeemable, either by the immediate payment of a capital equivalent to an 18 years' purchase of the rent-charge, or by a payment of $4\frac{1}{2}$ or 5 per cent. for $56\frac{1}{12}$ or $41\frac{1}{12}$ years, on a capital equivalent to 20 years' purchase of the rent-charge.

VI.—BAVARIA—

(*a*). The law of 1848 decreed (1) that after the 1st January XXVI, 8. 1849, personal services¹ of every description rendered in respect of the occupancy of lands, houses, &c., should be absolutely abolished, without any indemnity being made to the ground landlord; (2) that every peasant should be competent to buy off or commute, by means of a money payment once for all, or a yearly sum to be paid during a certain number of years, all charges, tithes, or burthens, of whatsoever description, subject to which he held his land from the ground landlord; and that, having done so, he should become the freehold proprietor of the land.

(*b*). The net annual money value of the burdens to be commuted was to be ascertained and fixed by a commission specially appointed for this purpose for each administrative district, the basis assigned for the valuation of all tithes in kind being the average of the ascertained value during the period of eighteen years from 1828 to 1845.

(*c*). The value having been thus fixed in the form of an annual money payment, the peasant was in each case left at liberty to redeem the payment:—

(1). By settling direct with the landlord, paying him either a lump sum, once for all, equal to eighteen times the amount at which his yearly money payment has been assessed by the Commissioners; or, by annual instalments spread over 34 or 43 years.

¹ *Viz.*, a certain number of days' work, with or without the peasants' cattle, &c. providing of beaters for the chase, &c.

- CHAP. X. (2). By creating in favour of the State a mortgage bearing 4 per cent. interest on his land, for a sum representing (as in the first-mentioned mode of commutation) eighteen times the amount of the annual assessed payment.

VII.—RUSSIA—

- XXVII, 27. (a). The leading principles on which the Emancipation Act is now based are as follows :—

(1). The cession by the landlord of the perpetual usufruct (tenancy) of the serf's homestead, and of certain allotments of land, on terms settled by mutual agreement, or, failing which, on conditions fixed by law.

(2). The compulsory sale by the lord, at the desire of the serf, of the serf's homestead, either on terms fixed by mutual agreement, or on terms fixed by law, the right of refusing to sell the homestead without the statute land allotment being reserved by law.

(3). State assistance in the redemption (purchase) by the serf of his homestead and territorial allotment, provided the lord shall agree to sell the latter.

(b). As regards, therefore, the interests of the serf, the Emancipation Act confers upon him the right of—

(1). a freeman ;

(2). enjoying on terms fixed by law the perpetual usufruct of the homestead, and of certain maximum and minimum territorial allotments, based on the quality of land which he cultivated prior to the emancipation ;

(3). converting his liability to service (socage) into a money rent, on terms fixed by law ;

(4). demanding the sale of his homestead from the lord, and (subject to the consent of the lord) purchasing his territorial allotment also ;

(5). fully and finally terminating (with the help of the State) his relations of dependence towards the lord of the soil, by the redemption of homesteads and territorial allotments.

(c). The interests of the landed proprietors were protected by the following provisions of the Emancipation Act :—

(1). Whether the lord grant the perpetual usufruct (tenancy), or the freehold, of the peasant homesteads and land allotments, a money payment, more or less equivalent, based on the rents which he previously enjoyed, is secured to him, and he is therefore called upon to cede without compensation only his political rights over the serf, and his right to the gratuitous labour of the domestic serf.

(2). He can insist on the serf purchasing his territorial allotment as well as the homestead ; and he can refuse to sell the former without the latter.

(3). He can avoid the cession of the perpetual usufruct of the territorial allotments fixed by law, by bestowing, as a free gift on the peasantry who shall consent to receive the same, a quarter of the maximum allotment of which they are entitled to enjoy the usufruct, with the homestead on it.

5. The nature of the burdens on the peasant cultivators, and the measures for their liberation, were substantially of

the same character in all the States. The burdens were reduced to a money amount of yearly value. This money amount, or a lower one, was then fixed as the permanent assessment on the cultivator, with liberty to him to redeem the money payment by a lump payment, or payments, of so many years' purchase of the money value. The first of these arrangements, *viz.*, a permanent assessment for the cultivators, was a novelty,—a great innovation,—in Europe. It was no novelty in Bengal, for the ryots had paid ancient customary rates of rent until the permanent settlement, and they were assured by the authors of that settlement, and by the Regulations of 1793, of a permanent assessment of their holdings. The novelty or great innovation has settled into law and custom in Europe—precisely the same arrangement which in Bengal accorded with ancient custom, and for which the faith of Government was as solemnly pledged to the ryot as the faith pledged to the zemindar has been put aside and subverted in Bengal,—the ryots being now subject to about quinquennial enhancements of rent. The ryots in Bengal were the real proprietors of land in 1789; but the majority of them now bear at least as heavy burdens as did, in that year, the cultivators in Continental Europe, who, through liberation from their burdens, are now peasant-proprietors, in a condition of prosperity with which the worse condition of the Bengal ryot can only be contrasted, not compared. In matters agrarian, which, after all, lie nearest to the hearts of the people, the rule of despotic States on the Continent, during this century, has been more considerate, beneficent, conservative, and restorative of ancient rights of the cultivators of the soil, than the English rule in Bengal for the same period.

6. In commuting the feudal services and burdens on land into money payments, credit was not allowed to the land-owner for unearned increment; the valuations were based on past actual collections, and even the average amount thus obtained was not, in every case, given to the land-owner without abatement. Furthermore, though the cultivators had been *adscripti glebæ* for periods compared with which the ninety years elapsed since the decennial settlement of 1789 are but a brief interval, the governments of the five States were not deterred from their measures of bare justice and humanity by pleas of prescription and vested rights, and of injury to persons who had bought estates in the inhuman belief in a perpetuity of exaction and oppression.

CHAP. X. 7. The measures of liberation included, we have seen, the option of redeeming a new perpetual assessment by a capital payment. Some of the States helped the peasants in providing the redemption money.

I.—AUSTRIA—

XXVI, 4. (a). From the estimated annual value of the feudal rights that were to be abolished, the Government cancelled one-third. Two-thirds remained to be provided for. The amount represented by these two-thirds, the State undertook to pay, in 5 per cent. bonds, the whole debt being redeemable in 40 years, by annual drawings at par. To carry out this engagement, therefore, it was necessary to provide, not only for the annual interest on the debt, but also for its redemption by means of a sinking fund within forty years.

(b). One-third of the amount necessary for this purpose is provided for by a tax levied exclusively on the new peasant-proprietors, and regarded as the price payable by them to the State for the immense advantage which they derived from the Legislation of 1818. The remaining one-third is assessed as a sur-tax on the local taxation of each province, and annually voted as part of the local budget by each of the provincial diets. The result of the arrangement is, &c. (see quotation in para. 4, II).

II.—BADEN—

XXVI, 3. The burdens were commuted for a capital sum, generally 16 to 18 times the amount of their annual value. The law further provided that this capital, of which the State undertook to discharge one-fifth, should be paid off in equal portions annually (shorter periods not being excluded), together with 4 per cent. interest during 25 years.

III.—PRUSSIA—

XXVI, 6, X. (a). The rent charges having been permanently fixed were made compulsorily redeemable, either by the immediate payment of a capital equivalent to an eighteen years' purchase of the rent charge, or by a payment of $4\frac{1}{2}$ or 5 per cent. for $56\frac{1}{2}$ or $41\frac{1}{2}$ years, on a capital equivalent to 20 years' purchase of the rent charge.

(b). The law for the establishment of rent-banks provided the machinery for this wholesale redemption. By it the State, through the instrumentality of the rent banks, constituted itself the broker between the peasants by whom the rents had to be paid and the landlords who had to receive them.

(c). The bank established in each district advanced to the landlords, in rent debentures paying 4 per cent. interest, a capital sum equal to 20 years' purchase of the rent. The peasant, along with his ordinary rates and taxes, paid into the hands of the district tax-collector, each month, one-twelfth part of a rent calculated at 5 or $4\frac{1}{2}$ per cent. on this capital sum, according as he elected to free his property from encumbrance in $41\frac{1}{2}$ or in $56\frac{1}{2}$ years, the respective terms within which. at

compound interest, the 1 or $\frac{1}{2}$ per cent. paid in addition to the 4 per cent. interest on the debenture would extinguish the capital. CHAP. X.

IV.—BAVARIA—

(a). If the peasant elected to redeem the permanent yearly rent charge XXVI, 8, v. with the State's help, the transaction was between the peasant and the State, and the latter, having obtained the mortgage on the peasant's land, undertook to indemnify the ground landlord for the dues or tithes which he relinquished.

(b). For the latter purpose the law authorised the Government to create "Land charge redemption debentures," bearing 4 per cent. interest, and to make over to each ground landlord a sum, in these debentures, reckoned at their full par value, equal to twenty times the annual value as fixed by the Commissioner of the land charges or tithes to be commuted.

(c). It will thus be seen that whilst the peasants were permitted to compound for their land burdens, by means of mortgages created in favour of the Government, on the basis of eighteen years' purchase of those burdens, the Government undertook to indemnify the ground landlords on the basis of twenty years' purchase, the State having been consequently a loser under this arrangement to the extent of the difference between the two rates assumed.

(d). The law of 1848 further provided that a sinking fund for the voluntary amortization of the peasants' Land Charge Redemption Mortgages should be established, and that the payments made annually by the peasants as contributions towards that fund should be devoted to the redemption, every year, of a corresponding amount of the debentures issued by the Government as indemnity to the ground landlords.

V.—RUSSIA—

(a). The work of concluding contracts for the redemption of the dues, or, in other words, for the purchase of the land ceded in perpetual usufruct, proceeded slowly, and is, in fact, still going on. The arrangement was as follows:—The dues were capitalized at 6 per cent., and the Government paid at once to the proprietors four-fifths of the whole sum. The peasants were to pay to the proprietor the remaining fifth, either at once or in instalments, and to Government 6 per cent. for 49 years on the sum advanced. The proprietors willingly adopted this arrangement, for it provided them with a sum of ready money, and freed them from the difficult task of collecting dues.

(b). The advances of redemption money by the State were protected by the introduction of a system of collective responsibility under which the peasantry were made to guarantee mutually the exact payment of their quit-rents, taxes, and "redemption dues." That collective responsibility was laid on the village communes, which, as corporate bodies, became purchasers of the land ceded to the peasantry, who thus became in a measure only tenants in common.

8. In this account of the manner in which funds for the redemption of peasants' dues, or the purchase of land, were raised.

CHAP. X. rights, were provided in five States, the following noteworthy points are observed :—

I. The sum advanced by the State to the proprietors was recoverable from the peasants, whose lands were mortgaged to the State till repayment of its advances.

II. The rate of interest charged on the advances was as low as possible, in two instances 4 per cent. per annum; with a further percentage for forming a sinking fund for liquidation of the debt in twenty-five to fifty years.

III. One of the States found it expedient to make each village jointly responsible for the sum advanced for each peasant's holding.

IV. The payments to the proprietors were not in cash, but in bonds redeemable at distant or indefinite periods;—recoveries from peasants were set apart for the redemption of the bonds.

V. When the dues by the peasants were once permanently assessed, the statesmen who secured this result could have urged, in the platitudes of safe men, that they had done enough; but they arranged further for the redemption of the dues;—evidently, it was felt that, even with a permanent assessment, the peasant would not be free from risk of oppression, if his relations of tenant towards a landlord continued. The feeling would have found justification in Bengal, where, no matter what the law might exact, its decrees affecting the relations of zemindar towards ryot may be ineffectual, through the overpowering influence of the zemindar. And so, European States, including some with a credit not so good as India's, and all of them with a credit inferior to England's, deemed it their duty to help the peasant-proprietors with the State's credit in buying freehold properties.

REDEMPTION OF BENGAL RYOTS' DUES.

CHAP. XI.

We have seen in the previous chapter how cultivators ending under feudal burdens were liberated by European states, sometimes at a cost to those States which they could not afford with the same facility as England or India. The burdens from which they relieved the peasants had accumulated during centuries. It is only during the present century, under British rule, and under Regulations and Acts since 1793, that similar burdens have accumulated on Bengal ryots, who have lost the status they had in the last century as peasant-proprietors.

2. The destruction of ryots' rights has occurred from a series of mistakes, and through the influence of the first and greatest mistake, *viz.*, the formation of a zemindary settlement for Bengal. The Parliament of England shares responsibility for that error. There was a dispossession of zemindars from their offices in which they were replaced by farmers of rents. Mistaking the zemindars for landlords, Parliament directed their reinstatement; and in carrying out its behests, Lord Cornwallis devised for Bengal a zemindary settlement. A Select Committee of the House of Commons stated, in 1812, in their Fifth Report, that unheard of rights had been conferred on zemindars in the settlement of 1789-93, and that the ryots possessed definite substantial rights: "with respect to the cultivators or ryots, their rights and customs varied so much in different parts of the country and appeared to the Government to involve so much intricacy, that the Regulation VIII, 1793, only provides generally for engagements being entered into, and botehs or leases being granted by the zemindars, leaving the terms to be such as shall appear to have been customary, or as shall be particularly adjusted between the parties; and in this it is probable that the intention and expectations of the Government have been fulfilled, as no new regulation yet appears, altering or rescinding the one alluded to." — The passage italicised, the Select Committee were called on so important a matter as the permanent settlement

CHPA. XI. the ryot's holding, to accept as sufficient evidence of everything being as it should be, that no new regulation had been issued amending that of 1793.

3. Nineteen years later, the Select Committee of the House of Commons in 1831-32 observed that

IV, 9, iii. "in the permanently settled districts in Bengal, nothing is settled and little is known, but the Government assessment. The causes of this failure may be ascribed in a great degree to the error of assuming, at the time of making the permanent settlement, that the rights of all parties claiming an interest in the land were sufficiently established by usage to enable the Courts to protect individual rights; and still more to the measure which declared the zemindar to be the hereditary owner of the soil; whereas it is contended that he was originally, with few exceptions, the mere hereditary steward, representative, or officer of the Government, and his undeniable hereditary property in the land revenue was totally distinct from property in the land itself. Whilst, however, the amount of revenue payable by the zemindar to Government became fixed, no efficient measures appear to have been taken to define or limit the demand of the zemindar upon the ryots who possessed a hereditary right of occupancy, on condition of their cultivating the land or finding tenants to do so. Without going into detail to show the working of the system, it may be proper to quote the opinion of Lord Hastings, as recorded in 1819, when he held the office of Governor General of India. "Never," says Lord Hastings, "was there a measure conceived in a purer spirit of generous humanity and disinterested justice, than the plan for the permanent settlement in the Lower Provinces. It was worthy the soul of Cornwallis. Yet this truly benevolent purpose, fashioned with great care and deliberation, has to our painful knowledge subjected almost the whole of the lower classes throughout these provinces to most grievous oppression, an oppression, too, so guaranteed by our pledge, that we are unable to relieve the sufferers—a right of ownership in the soil, *absolutely gratuitous*, having been vested in the person through whom the payment to the State was to be made, with unlimited power to wring from his co-parceners an exorbitant rent for the use of any part of the land." * * "If, then, the conclusion may be formed that the permanent settlement of Lord Cornwallis has failed in its professed object, it must be a matter of anxious enquiry to ascertain how far the evils of the system are capable of being remedied."

4. Thus, for the second time was the subject brought before Parliament, with a distinct report that ryots' rights had been destroyed, and that the permanent settlement had failed in its professed object; but nothing was done. Even had rates of rent been then fixed permanently for the ryots, their legal status, though worse than that conferred on them by the Regulations of 1793, would have been better than their *status* in the present day.

5. In respect of these two Reports of the Select Committees of 1812 and of 1831-32, Parliament had a special responsibility; but for the mistakes enumerated in Chapter VIII. para. 6, it had also a general responsibility.

6. These errors are no light thing; they mean the stupendous, almost incredible burdens, laid upon the ryots in the present day, which are enumerated in Chapter I, para. 13:—above forty millions of people impoverished by a settlement formed in execution of orders by Parliament;—and the British nation's grave responsibility for the errors is not set aside by merely talking of the benevolence of Lord Cornwallis, and with superior wisdom bewailing the mistakes of himself and his successors. Confessions of impotence will not relieve one iota of the ryots' burdens, whilst the governments of many European States have shown the way how to remove them.

7. Those European States liberated cultivators of the soil whose proprietary rights were weaker than the ryots' rights which British rule has destroyed; therefore is there a greater stress of obligation and duty on England, and on the Government in India, to do not less than several European States have done.

8. In proportion as the duty of the Government is imperative, the zemindars have to accept the inevitable, *viz.*, any measure for clearing the conscience of British rulers of the sin by which, though unwittingly, they destroyed ryots' rights, incurring the reproach of broken pledges. The examples of European States, and the principles which determine compensation for putting aside private rights, will command the acquiescence of zemindars; while again, the burden which is oppressing the liberated Russian serfs, from the redemption of their dues at too high a price, inculcates moderation, and zemindars are aware that ryots received no compensation whatever for the mutilation, in favour of the zemindars, of ryots' rights which were supported by the prescription of centuries, while the zemindars cannot plead the prescription of even one century.

9. As a first step there might be stopped all further enhancement of rent, thus carrying out, some ninety years after it was conceived, the clear unmistakable purpose of the authors of the permanent settlement that there should be a permanent assessment for ryots. This measure might be general throughout the permanently-settled districts under the Bengal Government; though the redemption of

— CHAP. XI. the rent, or purchase by ryots of the fee-simple of their holdings, might be gradual, being extended, beyond a few districts at a time, only according to the agency at the command of Government.

10. By stopping further enhancement of rent, the multiplication of middlemen would cease; and the factitious value that attaches to zemindaries from any scope which they afford for raising ryots' rents, would also fall away; though perhaps not to any thing like the extent it should; for, as observed by Sir George Campbell, law or no law, the zemindar can do much without law or against law. Hence, it would not be safe to rest content with prohibiting further enhancement of rent; the supplemental measure of redemption should be introduced without avoidable delay: it might include a sale of zemindary rights in Bengal by zemindars to the ryots, and a mortgage of Bengal by ryots to the Government as security for the purchase-money to be advanced by Government.

11. The outside compensation to zemindars might be about 16 years' purchase, for, in parts of the country where the price is higher, the exactions of zemindars enhance their income and the value of their estates, and it would be against sound principle to allow compensation for exactions. The road cess returns give 13 millions sterling as the yearly value of estates, and 8 millions as the annual value of middle tenures. To lay apprehension it might seem that a total yearly profit of 21 millions sterling is obtained out of the payments by ryots; but it appears that the 8 millions of yearly value of tenures are included in the 13 millions of valuation of estates. Taking the yearly value of estates, including that of middle tenures, at 13 millions sterling, the total, at 16 years' purchase, would be 208 millions sterling. At the same time the zemindars might be required to capitalise their payment of land revenue at twenty years' purchase; this for $3\frac{2}{3}$ millions sterling would amount to 73 millions. On this calculation, the outside payment to zemindars and middlemen for reducing ryots' dues would be 135 millions sterling. But very large abatements can be made.

I. Immediately above the ryot is the middleman who has farmed rents with the view of enhancing them; he must be bought out; at the top is the zemindar, whose revenue to Government has to be capitalised; he too must be bought out; but grades of middlemen, intermediate between these

two, have no authority over the ryots, and they may be left as they are, unless it be convenient to redeem the annuities payable to them. If these annuities be not capitalised, the outlay required will be much reduced. CHAP. XI. ---

II. Among the farmers immediately above the ryots, there are many who have only temporary leases; a number of these leases might on scrutiny be cancelled; others, on account of their short term, may be left to expire; the remainder would be redeemable for fewer years' purchase than the permanent interest of zemindars.

III. Like discrimination may be observed in dealing with zemindars, among whom are many who have extensively purchased estates on foreclosure of mortgages, or on other forced sales during the past ten or twenty years. It will bear consideration whether the compensation to these should be limited to about the sums which they paid for their estates, or should be regulated by the market value of the estates; if the former be a fair adjustment, then some material abatement of the total outlay would be effected under this head.

IV. In most zemindaries, the income is swollen by the levy of cesses, market dues, &c. The Regulations of 1793 warned zemindars that three times the amount of any fresh cesses imposed by them would be recovered from them for the full period that the cesses may have been imposed. There would be no call to redeem the payment of these unauthorized cesses at so many years' purchase of their annual yield. Were the law strong enough and searching enough, all these would be discontinued now, under present arrangements, without any compensation. The plea has been set up for zemindars, that the fresh cesses levied since 1793, in defiance of the Regulations of that year, are only an irregular form of raising ryots' rents; but the raising of rents is also repugnant to those regulations which provided a permanent assessment for ryots; therefore, in this matter, a too facile disposition to yield everything to zemindars by way of a compromise, which, if really a compromise, ought to include some equivalent surrender by them, should be restrained, it being borne in mind that extra payments to zemindars from undue concessions would be recovered from the ryots. The former should have justice, and in addition such liberal measure as will leave liberal measure also for the ryots, compared with their present condition.

CHAP. XI.

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V. There are good zemindars, and there are bad zemindars who rack-rent the ryots, taking from them the uttermost farthing. The annual value of the estates of these latter is, by reason of the oppression they practise, greater than that of other estates of the same class and size. On sale, they probably fetch, also, many more years' purchase of the income of the zemindaries than the estates of good zemindars; estates in Behar are worth above twenty-five years' purchase; in Eastern Bengal only fourteen or sixteen years' purchase. Were there to be no discrimination between the sheep and the goats, the good zemindar would simply get the reward of his own conscience; while the oppressive rack-renting zemindar would get Benjamin's portion. It would be for the district officers to cut down the annual value of the estates of bad zemindars, or to allow them fewer years' purchase than the standard compensation. A very nice adjustment would not be necessary; nothing more than the removal of glaring inequalities need be attempted in the scrutiny and revision, preparatory to payment of compensation.

XVI, 17. VI. The rents paid in the present day greatly exceed the established pergunnah rates of 1793, which were assured to the ryots in the permanent settlement. The only case in which, consistently with the assurance of 1793, the ryot's rent could be raised, was on his changing, after that year, to a more valuable produce; but in that case his new rent had to be adjusted to the established rate for the new produce at the time that the change was effected. The rate of that time, for the more valuable produce, became the permanent rate for the ryot; and any subsequent enhancement of it was a breach of the settlement of 1793. Hence, in the present day, a large part of the income of zemindars is derived from the excess of the rates paid by ryots over the permanent rates which were assured to them at the permanent settlement. It may bear consideration whether the zemindar's income should not be distinguished into (*1st*) the portion which is conformable with the spirit of the permanent settlement; and (*2nd*) the portion which has accrued from a violation of the Government's solemn engagement to the ryot. The compensation for the first and second parts could then be regulated on different principles. For the first, there would be full compensation; for the second, under English law an entail of an estate to which there is a good title can extend "ordinarily for fifty, but possibly for eighty or even ninety years. In common parlance—for the practice is that now in

force—estates in land may be settled upon any number of lives in being, *and twenty-one years afterwards.*” It is for lawyers and actuaries to say whether, the foregoing distinction being recognised, an inferior compensation for the second part of the zemindar’s income would not be fair, nay, imperative, in justice to the ryot. CHAP. I
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XXXI, 7

VII. Existing rents have been adjusted to a considerable rise of prices since 1793, in violation of the permanent assessment which was designed for the ryot: it is probable that prices will fall, and this consideration should induce caution in appraising the value of estates.

VIII. To Bengal officers, who are familiar with details of zemindary management, and of the relations between zemindars and middlemen, and zemindars and ryots, other equitable grounds of abatement will perhaps occur; and some considerations in favour of zemindars may also arise. One large exception, for instance, must be made regarding minerals; but with respect to these there is no tension in the relations of zemindar and ryot, and accordingly it is not necessary to buy out zemindars’ rights in respect of coal fields, mines, quarries, &c.

12. We assumed, in para. 11, that an outside sum of 135 millions sterling, *viz.*, 208 millions gross, less 73 millions of capitalised land revenue, might be required to buy out the rights of zemindars and middlemen. With the preceding large abatements, the net amount would probably be reduced below 100 millions, for the gross amount includes 128 millions of compensation to middlemen alone, or a sum which at $4\frac{1}{2}$ per cent. interest would give them an income of one and a half times the land revenue of Bengal. Making, however, the large assumption that 100 millions sterling net would be required to buy out the zemindars of Bengal, and adding 100 millions more for paying off ryots’ debts to village bankers (Chapter XII), thus raising the total to 200 millions,—how is that money to be provided?

13. Following the example of the European States which have liberated their cultivators of the land, the money for redeeming the dues to zemindars might be provided in paper, namely, in bonds to be issued to the zemindars; but as the entire Public Debt of India, bearing interest, in both England and India, may be reckoned at 143 millions, would not the issue of a stock of 100 millions sterling depreciate Indian securities? England and the British rule in India are jointly responsible for the present unsatisfactory condition of

able for gradually extinguishing the guaranteed loan, England's guarantee would diminish yearly, after provision of the full amount of loan, and would cease within the term of the next generation. The English Government might, however, be asked to agree to an arrangement by which the full advantage of the Imperial guarantee on the whole amount of the guaranteed loan, might be continued to India throughout the period of liquidation of the ryots' debt to Government, on the condition that the sinking fund formed from ryots' repayments of capital is invested in Indian securities. By observing this condition the guaranteed stock could eventually be withdrawn in bulk, or in three or four instalments, by the issue of unguaranteed stock.

15. The 200 millions sterling of guaranteed loan would not be wanted at once; the redemption of ryots' dues would be gradual; if, when the work is in full swing, it proceeded at the rate of 10 or 12 millions sterling a year, that would perhaps be considered very satisfactory progress. France raised 220 millions sterling for the War Indemnity in two years. The Imperial guarantee of the English Government would ensure 200 millions sterling, at not more than $3\frac{1}{4}$ per cent. interest, if spread over twelve or fourteen years.

16. The gross amount required for paying the zemindars would, at the outside, be 135 millions sterling, *plus* the 73 millions of capitalised land revenue which they would have to return; total 208 millions gross. As already observed, the progress of redemption of ryots' dues would be gradual; so that recoveries from ryots who have redeemed their payments would be concurrent with outlay in other districts for fresh redemption. In this way, in the long run, the actual guaranteed loan would not exceed 200 millions sterling.

17. The assets for meeting the obligations to be guaranteed

by the British Government would be the capitalised land revenue, recoveries from ryots, and a surplus of yearly revenue over expenditure which would incidentally ensue from the redemption measures. This last being assured, as will be presently seen, and on the condition that these assets would be reserved for discharging the imperial guarantee, the loan under that guarantee might proceed at the rate of 15 millions sterling a year, irrespective of the actual yearly progress of the redemption measure, while the honour of the Indian Government would be committed to maintaining satisfactory progress. CHAP. XI.

18. The 15 millions sterling of yearly borrowing under the imperial guarantee could be applied in payment of home charges. It would thus liberate 19 crores of rupees yearly for the extinction of a corresponding amount of the Public Debt in India—with the two results that loss by exchange to the amount of 4 millions sterling a year would cease, and the 4 per cent. Government securities of the existing Indian stocks would rise above par. Of the saving of 4 millions sterling in loss by exchange, a portion would cover present deficit or prevent new taxation; but the bulk would, as a saving from the redemption measure, be strictly appropriated to the reduction of debt, or to providing without fresh borrowing for the 2 millions a year of Productive Public Works expenditure.

19. In issuing stock to zemindars, the amount of the issue might be restricted by issuing it at a high rate of interest, namely, 6 per cent., guaranteed for a fixed period. In theory, if two stocks bear, respectively, 4 and 6 per cent. interest, each in perpetuity, the 6 per cent. stock would command a premium of only 50 per cent. compared with the 4 per cent. stock; but in practice, where the perpetuity of the stock bearing the lower interest is not assured, while the higher interest on the other stock is guaranteed for a fixed term, the latter commands a proportionately higher premium than that obtainable with the common perpetuity of the two stocks. Thus, if the interest on 4 and $4\frac{1}{2}$ per cent. stocks, respectively, were alike perpetual, the $4\frac{1}{2}$ per cent. stock would command a premium of $12\frac{1}{2}$ per cent.; whereas the ordinary difference between the market values of 4 and $4\frac{1}{2}$ per cent. stock, of which the latter is guaranteed for only 14 years, is 5 or $5\frac{1}{4}$ per cent., the premium or difference being the present value of the yearly amount of the extra interest for the number of years for which it is guaran-

CHAP. XI. teed. With this fact we may, for the matter in hand, couple the consideration that with the temporary help of a $3\frac{1}{2}$ per cent. loan, under the imperial guarantee, for paying off the existing loans which bear 4 per cent. or higher interest, the perpetuity of 4 per cent. as the lowest interest for Indian stock is by no means assured; on completion of the operations here discussed, including the eventual repayment of the loan under the imperial guarantee, future unguaranteed Indian loans would bear less than 4 per cent. interest. Indeed, the average price of 4 per cent. India stock, in London, in 1874, gave a return of only 3.82 per cent.

20. Coupling, then, these two considerations, namely, the guarantee of 6 per cent. interest for a fixed period, and the strong probability that the rate of interest on Indian loans would settle down at below 4 per cent. a year, zemindars might be paid in bonds bearing 6 per cent. interest, in respect of which that rate of interest may be guaranteed for a period so fixed that the stock would, on its issue, command a premium of 50 or 40 per cent., the 4 per cent. being then at a premium, under the influences in para. 18. Hence to a zemindar who has to receive 7 lakhs as compensation, the Government (with 6 per cent. paper at a premium of 40 per cent.) could tender, as full discharge, 5 lakhs of paper bearing 6 per cent. interest, for, by selling it in the market he could realise 7 lakhs. We have assumed that the compensation payable to zemindars, &c., would amount to 135 millions. In this manner, the actual issue of stock could be restricted to 96 millions, or about two-thirds of the present amount (143 millions) of the Public Debt of India, at home and in this country, which will have been paid off during the operation.

20a. There would be great gain to Government, without loss to anybody, from the issue of 6 per cent. stock. The zemindar, as we have seen, would get full value for his estate by selling the stock. In paying 6 per cent. on the stock issued to the zemindar to the extent of two-thirds amount value of his estate, the Government would not lose, because the ryot would pay the whole of that interest in the rate of 4 per cent. on the full amount value of the zemindary. On the contrary, the Government would gain, because on expiration of the period for which 6 per cent. interest is guaranteed, the Government, by reduction of the interest from 6 to 4 per cent., or less, would continue liable for only two-thirds or four-sevenths the amount value of the zemindaries, instead of for the whole

value, which latter liability would attach to the issue of 4 per cent. instead of 6 per cent. stock to the zemindar. At the end of the period for which 6 per cent. interest may have been assured, the Government would gain 45 or 39 millions sterling, on the assumption of 135 millions as the full value of the compensation to zemindars which Government will have discharged with 90 or 96 millions of 6 per cent. stock; the extra 2 per cent. of interest having been paid in the interval by the ryots in the reckoning of their debt at 4 per cent. on the full value of the estate.

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21. By the measures suggested in paragraphs 18 and 19, the 6 per cent. stock would be issued in arrear of the *vacuum* to be caused by the discharge of 15 millions sterling a year of existing debt; and it would be issued to the extent probably of two-thirds the yearly discharge of the present debt. The issue, therefore, could not depreciate Indian rupee securities in this country; they would rise in value.

22. The recoveries from the ryots might be in the form of a percentage on the gross valuation of the dues by them,—other than the road cess,—which are to be redeemed by the capital payments to zemindars, *viz.*—

1st.—Four per cent. annual interest on the gross valuation of their dues, at sixteen years' purchase, which would exceed 6 per cent. on the amount to be paid to zemindars.

2nd.—One per cent. to cover charges of collection.

3rd.—One per cent. to cover loss to Government from capitalising at twenty years' purchase the land revenue now paid by zemindars.

4th.—Two per cent. for a sinking fund.

22a. The third and fourth items could be reserved for buying up and cancelling stock of the loan bearing the Imperial Guarantee, or (para. 14) Indian stock. It would bear discussion whether the ryots' sinking fund should be credited with interest at 3 or at 4 per cent. In favour of the former would be the very solid advantages to accrue to the ryots from the redemption of their dues, *viz.*—

I. Exemption from enhancement of rent, and cessation of rent payments.

II. Saving to the ryot of the zemindars and middlemen's charges of collection and management, which are included in the rent now paid by the ryot, but which would be excluded from the composition with the zemindar. This saving would be considerable; for under the present sys-

CHAP. XI tem it often happens that more than one person incurs expense for collecting from the same ryot.

III. A saving of law expenses; for these would cease, on discontinuance of enhancements of rent, and of disputes about land. It would perhaps be found on enquiry that, if law expenses and other charges on account of litigation, which the ryot now pays, were to be thrown on his holding at a rate per beegah, the ryot's rent would in many cases be doubled.

IV. Discontinuance of *abwabs*, irregular cesses or exactions, market dues, &c.

V. Cessation of certain other payments, when there is no longer a zemindar or middleman to dispute with the ryot about land.

VI. The acquisition by the ryots, as the joint property of their village, of all the waste land in it;—for, the whole estate being purchased from the zemindar, the waste land in it would go with the estate.

23. The charges of collection, which in para. 22*a* are reckoned at 1 per cent., may seem a low estimate; but it is assumed that the advantages to the ryots, which are enumerated in para. 22, would be so considerable, that the joint responsibility of the ryots in each village, for the Government's capital payments in redemption of the village's dues to the zemindar, could be exacted by Government as a condition of its help in purchasing the zemindar's rights. This would assimilate the villages in Bengal with the village communities in the North-Western Provinces; failing this, the duty of realising dues to Government might be exacted from the village officers as a condition of the Government's help. This would assimilate the village organisation with that in the Madras and Bombay Presidencies. If each village arranged to pay its dues on the appointed dates into the nearest sub-divisional treasury, the charges of collection might be less than 1 per cent.; and they would cease on liquidation of their debt to Government by the ryots. The charges of collection would at any rate be less than the present charges of that kind, and of management, which zemindars and middlemen now recover from ryots. The existing expenditure would thus limit the charge, and the Government would not seek to profit by a higher percentage than may be sufficient.

24. With the joint responsibility of each village for its ryots, loss from bad debts need not be apprehended, espe-

cially as, through the redemption measure, by the cessation of enhancements of rent and of arbitrary cesses, and by the amount of money which would be thrown into circulation through the capital payments to zemindars, and to village bankers in discharge of ryots' debts, the value of land and of each ryot's holding would increase. Even if joint responsibility of the village be not formally established, the Government could reserve the power of recovering losses from bad debts written off in one year, by raising the rate of interest on the village's debt till the loss is recovered: this would ensure the joint responsibility of the village. CHAP. XI.

25. If a ryot pays rent for his land at 2 rupees a beegah, the capitalised value for redeeming his dues would be Rs. 32. According to para. 21 he would pay 8 per cent. interest on that, or Rs. 2·56, and thus his yearly burden would be seemingly greater than now. But firstly, the Rs. 2·56 include 2 per cent. for a sinking fund, or '64, which in time would entirely terminate his payment of Rs. 2·56; secondly, his gross payment would not be Rs. 2·56, by reason of the large abatement to be made from the gross valuation of estates (para. 11); thirdly, the solid advantages detailed in para. 22 would outweigh the greater part, if not the whole, of the direct payments mentioned in para. 21. Lastly, the zemindars in the present day receive rents much higher than the pergunnah rates of 1793, plus cesses of that year; that is, they receive more than their just dues: if, therefore, a test like the above, applied to the scale of recoveries from ryots sketched in para. 21, should show a disadvantage to the ryot, under the scale, the remedy would lie in reducing the valuations of zemindars' estates.

26. The main features of the scheme may be summarised as follows:—

I.—ZEMINDARS—

MILLIONS STERLING.

To receive 13 millions	× 16 years' purchase	= 208
„ pay 3½ „	× 20 „ „	= 72

CHAP. XI. might require special provision and legislation, in directions which are indicated in the Appendix.

29. A survey of ryots' holdings, that is, a cadastral survey of Bengal, would be necessary. The outside cost would be 8 annas an acre, or 2½ annas per beegah. This could be recovered from the ryots, while the survey could absorb much of superfluous public works establishments.

30. Doubts may occur that the borrowing of 150 to 200 millions sterling in England, whereby the rupee debt now held in India would be temporarily transferred to England, will not be tolerated by the Home authorities.

31. The answers are:—

1st.—Which is worse,—the broken pledge of a permanent assessment for the ryot; the moral responsibility for unsatisfactory relations between zemindars and ryots, and for the poverty, distress, and moral degradation in which the mass of the cultivators in Bengal live, as the result of ninety years of their British rulers' gift of a zemindary settlement; or a borrowing in England which will not increase the total debt of India, and which, by discontinuing 4 millions sterling a year of loss by exchange, would save the country an else inevitable amount of fresh taxation which it is perhaps not able to bear?

2nd.—Though the loan under the imperial guarantee would be raised in England, yet it would not form an addition to the amount of Indian stock of all kinds now held in England. Exchange would improve with the cessation of Council drafts; and when that happens, and a void in the money market in India is created by the discharge of Rupee loans and the cessation of borrowing in India, the Indian Government could arrange for paying in India at a favourable exchange the interest on the existing sterling loans and on guaranteed railway stock. The former may be reckoned at 65 millions sterling, the latter at 97 millions, total 162 millions sterling of stock bearing 4 per cent. or higher interest. There are other 16 millions sterling of Rupee paper enfaced for payment of interest in London, making the gross total 178 millions. A portion of this would be paid off from the new loan under the imperial guarantee; the remainder would be transferred to India, where there would be a special demand for it, under the suggested facilities for the payment of interest, from the scarcity of paper in the Indian market on the discharge of the existing Rupee loans, from the accumulation, in village bankers' hands, of the money

paid to them in discharge of ryot's debts, and from the yearly savings of the ryots when they are liberated from the burdens mentioned in para. 22. Hence, the result, at the close of the operation for raising 200 millions sterling in London, under an imperial guarantee, would be that the amount of Indian stocks of all kinds held in England would, in some fifteen years from the present time, exceed the present amount by only 22 millions, or a degree of growth which might be predicated from the ordinary rate of increase of English investments in Indian securities, even if there were not to be any borrowing of 200 millions under the imperial guarantee. Furthermore, the interest payable in England on those 200 millions sterling, would be less than the interest now paid there on Indian stocks of all kinds.

32. As to the imperial guarantee, the English Government would certainly not withhold it when pressed with the following considerations, *viz.*—

I. England's special and general responsibility for the evils which have happened in Bengal from the zemindary settlement.

II. The great advantages to the Government, the country, and indirectly to England, from the redemption of ryots' obligations to zemindars.

III. The inappreciable risk to England from guaranteeing the redemption loan, and the certainty of its discharge in the next generation.

IV. A recollection of how much was added to the present debt of India, from causes for which Parliament or the English Government was responsible, *e.g.*, the mistake which was committed in funding the provision for the discharge of East India Stock in consols instead of in the stock itself; *2nd*, the expenses of the first and second Afghan wars; *3rd*, an undue debt to India of home charges of the British troops in India.

V. The mistake committed in the zemindary settlement: until 1765, and later, the zemindars were administrators of districts, and not merely collectors of revenue. Their duties of administration were transferred to separate European agency at considerable expense; their duties as collectors were also partially transferred to like agency, at further expense; but their ~~usual~~ remuneration was not reduced for the residue of their duties as collectors. On the contrary, a settlement was made with them, in circumstances, and with after-thought of legislation, which gave them power

CHAP. XI. — over ryots that was abused for enhancing rents and levying exactions, till, in the present day, much more than 20 millions sterling a year is spent in collecting not quite 4 millions a year of land revenue. This enormous expenditure, on a lesser scale it is true, in earlier years, has continued for three generations, with the results which we have seen. Parliament is responsible for the mistake of the zemindary settlement, equally with the Indian Government. The duty of making amends was never more urgent than now, when there is felt great embarrassment and difficulty in remitting to England India's tribute of 15 millions sterling a year, most of it for unproductive expenditure. India, to provide that tribute, has to send 15 millions sterling of exports beyond the exports which are interchanged against imports or for other equivalents. In other words, she, in the final result, receives nothing for those 15 millions sterling of exports beyond the discharge by that means of the tribute, save in respect of stores purchased, and interest on the capital of Guaranteed Railways. Hence, in providing the tribute she does sustain a loss in one form or another; partly, in increase of taxation, which, unlike "the fertilising rain from heaven," does not return to Indian earth, but is spent in a distant country; partly in higher prices of articles consumed in India; partly in further diminished incomes of her people. There is an especial obligation on England to lessen to India the pressure of this burden, and she can afford relief by now performing a too long deferred act of reparation and atonement.

CHAPTER XII.

RYOTS' DEBTS AND EXPENSES.

Perhaps the liberation of the Bengal ryots would not be complete without their further enfranchisement from village bankers. Much of what the zemindar spares, the money-lender takes from the ryot, and the work of stopping enhancement of rent may be but partially done, if the village banker be allowed to run up his score against the ryot. The re-organisation of village communities would help a reform in this matter. CHAP. XII.

2. In another view, also, some action of Government might be unavoidable, if it helped the ryots in buying out zemindars' rights. The Government's advance of the purchase money would be virtually on mortgage of the ryots' holdings; and that security might be imperfect if the money-lender retained power of attaching each season's crops. It were better for Government to settle with the money-lenders, and having made itself the sole creditor of the ryot, to cry down his credit to others, and prohibit the sale of his holding to others, so long as he remained indebted to the Government.

3. It would be necessary, in that case, for the Government to advance money to the ryot for expenses of cultivation, and for marriages and funerals, besides paying off his debts.

4. A great deal of the ryot's indebtedness is for compound interest, at usurious rates. The usury has been justified on grounds which have force, if the present system is to continue; it is held that the rate of interest is high because it covers a great risk. It may be so; but when once the Government determines on paying off the ryot's debts, the risk is at an end, and all the past fear of risk, under the influence of which a high rate was charged, *and simply carried to account against the ryot*, proves to have been unnecessary; a mere sentiment, or timorous feeling. To pay the money-lender the compound interest he had heaped up on paper, against the ryot, under needless fear, would be Quixotic. He would himself acquiesce in the propriety of a revision, and a considerable reduction, of his account by the district officer, when he is assured payment in full of the real principal of his claim with reasonable interest.

CHAP. XII. 5. The village bankers might be paid the reduced amount of their claims in Government paper, carrying 4 per cent. interest and 2 per cent. sinking fund, which the Government could receive at par in payment of dues, re-issuing it to others in discharge of similar claims against ryots. The ryots, in addition to the payments detailed in para. 21 of Chapter XI, would pay to Government, on this new account, 8 per cent. upon the amount of the paper issued by Government to the village bankers. The village would be jointly responsible for this, as for the payments in Chapter XI above quoted.

6. Respecting marriage expenses, the Government might add to the conditions of its help, in the redemption measure, an engagement by each village, and an acknowledgment by the heads of villages, of a special responsibility for using their influence to restrict such expenses within a moderate amount; subject to an increase of the rate of interest on the village's debt to Government, should there be no improvement in this respect. This measure, and the prohibition of credit to ryots by private individuals while their debt to Government remains undischarged, might be efficacious.

7. The expenses for cultivation and for marriages and feasts might be advanced on interest at 6 per cent. per annum, through the representatives of the village, on its joint responsibility with the ryots; and the waste lands of the village might be considered hypothecated for all the ryot's dues to Government for which the villagers are jointly responsible, and as an incident of that their responsibility. It would be for the Government to consider whether the villages might be grouped in an organisation of circles smaller than a subdivision.

8. Advances by Government for the expenses just mentioned might be issued in district currency notes, without silver having been deposited in the district for the notes, which would be legal tender, and would be received in the district in payment of dues to Government.

9. The principal work of the village headmen or representatives would be that of receiving the payments mentioned in Chapter XI, paragraph 21. The duty would be analogous to that now performed in the ryotwar territories of the Madras and Bombay Presidencies: the issue and recovery of advances for expenses of cultivation, &c., would be added as an incidental duty to the other more onerous func-

tions. The same legal power and the same administrative agency which the Government has in the Madras and Bombay Presidencies for the recovery of its land revenue, the Bengal Government would have for the realisation of its dues from villages. CHAP. XII.

10. The duties here suggested for Government functionaries, though new in Bengal, would not be novel; the ryots' payments towards their debt for the purchase of zemindars' rights would be in the place of rent; the advances to them for expenses of cultivation would be the same as now, only on a larger scale, and through a re-organised body of village officers; the advances for marriage expenses, &c., are not new in the experience of Government, inasmuch as advances for like and for additional purposes are made on the Continent of Europe to peasant-proprietors by district banks, which are Government institutions or are controlled by Government. Only through such advances, and by the means above suggested, can the Government escape the reproach, which it incurs in some other parts of India, of realising its land revenue and dues only by plunging its ryots into debt on usurious interest.

11. In short, the duties which would devolve on the Government of Bengal would be no other than those which, for the most part, form the ordinary routine of work in districts in the Madras and Bombay Presidencies, and for the remaining part, in some countries on the Continent of Europe. A heavy weight of obligation for duties unfulfilled for nearly a century supplies to the Bengal Government an overpowering motive, and would inspire it with a determined spirit in the matter, without which the other Governments appear to have succeeded with ease.

12. It has been urged that the village banker is indispensable, even though the Government were to pay ryots' debts and advance them money for expenses of cultivation and for current expenses, for he provides seed, takes over the crops at a valuation, sends the produce to market, &c.; but the answer to this is that in parts of the Lower Provinces where the ryots pay low rents they do without a village banker; in other zemindaries he is not allowed on the estate by the zemindar, though the latter does not carry the ryots' produce to market; there are parts of India, under ryotwar settlement, in which the village banker is dispensed with; and in the peasant-proprietorships on the Continent, he is not a necessary institution. Moreover, when the village banker is

CHAP. XII. — encumbered with the money paid to him by Government in discharge of ryots' debts, he would soon discover that there was no better way of employing it than in buying produce from the ryots, and finding new markets for it;—he would buy as hitherto, with only this difference, that, instead of taking over the produce at his own valuation, he would have to give a fair price for it to the ryots.

13. It is not possible to estimate the amount of ryots' debts; but a very rough idea of the minimum may be attempted for assisting the consideration of our subject. The annual value, *i.e.*, the bare profits, of zemindars' estates, as returned for the road-cess, is 13 millions sterling. Charges of collection and management might increase that amount to nearly 14 millions, and the land revenue adds nearly 4 millions, total, nearly 18 millions. If we assume this as representing one-sixth of the total value of the yearly produce, there remain nearly 90 millions sterling for division between the ryots (for their subsistence) and the money-lenders, as interest and for advances for seed, cattle, &c. The high rate of interest charged to the ryot, *viz.*, 36 to 50 per cent., must prevent the money-lender from letting the debt increase to many years' gross income of the ryot; on the other hand, the yield from seed is very large, though the soil of Bengal has perhaps deteriorated greatly since the beginning of this century. The larger the yield the greater the number of years for which the village banker would allow the ryots' debts to accumulate, and it seems within bounds of possibility that ryots' debts to village bankers exceed 100 millions sterling, even when reduced by the abatements mentioned in Chapter XI, para. 4, and by limiting the need of advances for current expenses to six months in each year.

14. Or to apply another test. The adult male population of Bengal engaged in agriculture is 11 millions; the adult male labourers are $2\frac{1}{2}$ millions; and the adult males in industrial occupations, 2 millions. Omitting these last, we have a total of $13\frac{1}{2}$ millions: multiplying that by 3; we have 40 millions of souls whose yearly subsistence has to be provided out of the holdings of the ryots. At Rs. 2-8 per month, or 30 rupees a year, the annual amount becomes 120 crores, or 120 millions sterling. If we assume that one-half of this has to be advanced by the village banker, we have 60 millions sterling, to which we must add interest, advances for seed and cattle, and accumulations of past years' debts; and then we arrive at the same conclusion

as in the preceding paragraph, namely, that the ryots' debts, CHAP. XII. even if reduced by striking-off compound interest at usurious rates, must exceed 100 millions sterling.

15. The reduced claims of the village bankers might be discharged partly in cash, partly in paper. For the cash payments there would be available 73 millions sterling from the amount to be borrowed in England under imperial guarantee, conformably with the suggestion in Chapter XI, para. 14. The balance might be paid in Government bonds bearing 4 per cent. interest, with a sinking fund of 2 per cent., attached: while the ryots might pay 8 per cent. interest, including 2 per cent. sinking fund. The payment would be additional to the payments detailed in para. 21 of Chapter XI, and the village would be jointly responsible for this as for the payments in Chapter XI.

16. The bonds issued by Government to village bankers might be received at par freely in payment of Government revenue. The bonds thus received in payment of revenue could be re-issued in fresh discharge of other similar claims against ryots during the course of the redemption operations.

17. The 73 millions sterling of cash payment need not be made in silver; a great part might be paid in a new series of district currency notes (including tentatively notes of smaller denominations than the present) for which silver would be payable in the district of issue, and at the Presidency town. The notes would be issued against the 73 millions sterling of silver available from the proceeds of the loan to be raised under imperial guarantee; but the whole of the silver need not be carried to the several districts whence the notes against it issue; the bulk of it may, at the outset, be kept in the Presidency town, at the Head Office of Issue; for some incidents of the redemption operation would render it probable that most of the notes issued in the interior would be remitted to Calcutta,—while of the remainder another large part would remain outstanding in active local circulation, thereby making it safe to keep the smaller part of the silver in the district offices of issue.

18. The activity of the local circulation would be maintained by the following circumstances:—

I. At the season for sowing, the ryots would receive advances for cultivation; and, during the year, for marriages, deaths, &c.

II. The payments of ryots' dues to village bankers might be made principally about the time of harvest; while the

CHAP. XII. yearly repayments of their dues to Government by ryots would ensue after harvest.

III. If the payments from Government treasuries under I and II be made principally in district currency notes, the paper money issued in both kinds of payments would, to a great extent, accumulate with ryots during harvest, and would be by them returned to the district treasury in payment of their yearly dues. Thus a great part of the district note circulation would be local; and the bulk of this would return to the treasury, not to be exchanged for silver, but in payment of dues to Government. Another large part would go to the Presidency town, and these two large divisions of the total issue of district notes would leave a small residue against which the district treasuries need hold silver, not to the full amount of such residue, but with due advertence to its distribution over the several months of the year.

19. The district notes remitted to the Presidency town would be discharged from the silver reserved there for the purpose out of the 73 millions obtained from the proceeds of the loan under the imperial guarantee. The notes might be held there until the season came round for buying produce afresh from the ryots, when they would be taken out by merchants who would pay silver instead into the Currency Office at the Presidency.

20. On the surface, it would seem that on the silver retained in the Currency Office at the Presidency, the Government would be sustaining a loss of interest. But it would not be so. The interest paid by Government at the rate of $3\frac{1}{4}$ per cent. per annum would be more than covered by the 6 per cent. interest leviable from ryots, for whether the district notes be issued to the ryots, or to village bankers in discharge of ryots' debts, the ryots will pay the higher rate of interest on the amounts advanced or discharged by the notes.

21. We have also seen that by keeping the bulk of the silver in Calcutta, and having regard to the small demand upon the silver reserve in the district treasuries for cashing district currency notes which would be returned to the treasury in payment of dues to Government, the cost of moving silver about for maintaining the convertibility of the notes would be small. The difference between the 6 per cent. interest leviable from ryots, and the $3\frac{1}{4}$ per cent. payable by Government, would very much more than cover it. Thus during the long period of the redemption opera-

tion, the people would be educated in the use of paper money CHAP. XII.
at a considerable gain to the Government, for, eventually, a —
portion of the amount of district currency notes that may
prove to be permanently outstanding, will have permanently
displaced silver, and it could be invested in Government
securities.

CHAPTER XIII.

ENGLAND'S OBLIGATIONS OF HONOUR AND DUTY.

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Making a second selection (Chapter X) of the facts established in the course of these remarks, we choose the following:—

I. Ninety years after the permanent settlement (1) the majority of the zemindars are poor and in debt, and, through the continual sub-division of estates under the Hindoo laws of inheritance, the poverty of the class is increasing, inso-much that estates in large numbers are passing into the proprietorship of bankers (sometimes foreigners in Bengal); (2) the condition of the ryots through the greater part of the Lower Provinces is bad, and in one province it is wretched.

II. The amounts paid by ryots to zemindars and middlemen give to these two latter net profits equal to two-thirds the gross land revenue of British India; if cesses, charges of collection and management, law expenses, and other payments be added, the Bengal ryots pay an amount more by one-half than the amount of the land revenue from the rest of British India.

III. With all these enormous payments the ryots are not assured of continuing on the same assessment for more than five years where Lord Cornwallis assured them of a fixity of rent.

IV. Of late years, with these conditions so unfavourable to the proper cultivation of the land, the possibility, and the actual visitations, of famine have increased.

V. The frequency of revision by zemindars of ryots' assessments has multiplied the gomashdahs of zemindars and middlemen, and their tremendous power of oppressing ryots, from whom they levy cesses on their own account, without the zemindar being able to prevent them, though he incurs the reproach of all their oppressions.

VI. In a country almost purely agricultural, the condition, as a whole, of both zemindars and ryots is bad, and, to a great extent, the ryots are dissevered from the great zemindars (the ideal zemindars of Lord Cornwallis), and are practically under subjection to gomashdahs, farmers of rents, and petty zemindars. The peasantry of the country, instead

of being peasant-proprietors, are the servants of tyrannical servants.

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VII. Such is the condition of the class whose labours were the riches of the State in the estimation of those who conceived the zemindary settlement for the ryots' benefit; and such are the prospects of the class which in other countries are the bone and sinew, the strength and manhood, of the nation. The career which in Continental Europe this class finds in a growing prosperity from the improvement of their own land, and the acquisition of more of it, is shut to the ryots of Bengal; that is, the mass of the population have no career open to them;—servants of servants they are, and they see that such they must remain.

2. With some perception of this longing for a career, the Government is reserving all offices or appointments below a certain value for the natives of the country; but the Government cannot work a miracle, and what are these few loaves and fishes among so many! *2ndly*, the new career will not change the character of the condition of the people;—one kind of service will be simply exchanged for another kind, by a few thousand natives, and that is all: the people will continue a population of servants, instead of holding, as peasant-proprietors, a position of social independence, without which it is not reasonable to look among Bengalees for the truthful, open, firm, and manly character which they are reproached with lacking. Service under masters, even though those masters be a Government, does not foster these qualities. In other words, so far as British rule is responsible for a condition of the ryots of Bengal, in which they have no hope, and no social independence, it is also answerable for their moral degradation.

3. Glory to God on high, on earth peace, good will towards men! was the strain which announced salvation to a shortly-to-be-redeemed world. But, confused by the echoes of nineteen centuries, the strain, so dear to English associations, strikes with a harsh dissonance on the ears of Bengal ryots. "What peace and good will! with these unhappy relations with our zemindars, these incessant disputings about rent, which leave life without hope or rest, and with but little sustenance! British messengers of salvation do indeed bring to us its news of peace and good will, but British rule has destroyed our peace, and keeps us in perpetual unrest, feverish anxiety, many of us in a demoralis-
hate, and, several millions of us, on the verge of famine!"

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4. During the greater part of this century, Bengal has been the field of labour of missionaries, including some of a rare self-devotion and resolute will, of brave hearts and steadfast purpose, which a life-long ill success could not weaken or discourage, and not intellectually inferior, perhaps, to some Bengal Governors. These qualities, exerted in some other sphere, could have borne rich fruit of good to others; but labouring as these men did among a people whose moral degradation was an incident of a material condition which every year was deteriorating, their life, so far as it concerned others, was on the surface a mistake; and if a mistake, not the least sad in the list of mistakes which accompanied and followed the zemindary settlement. Excepting here and there, can missionary power break any other than its own strength, in its efforts to bring home a religion of hope to the hearts of a people whose deteriorating condition, over the greater part of Bengal, is ever sinking them deeper into a stolid unreasoning materialism?

5. Peace on earth, good will towards men! is, however, only one-half of the Christmas strain, sweet to English hearts, which strikes as dissonance on the ryots' ears. "For unto you this day is born a Saviour, who is Christ the Lord!" Peace the ryots have not known, for well nigh a century, in the incidents affecting land, which make the sum of their happiness or misery. But Saviour! Redeemer!—partly the tradition, partly the experience of a century of suffering, will fill the ryots with rapture at the strange music of the word Redemption. Bring but the word home to them! at first they may have but a glimmering of its meaning, when they see their redemption from demands which, as things have gone on for ninety years, might, else, never end; but, escaped from bonds which now keep them in a low grovelling materialism, freed from carking care, and from an enmity to their zemindar which now corrodes the better qualities of their nature, free to think and feel like men who have hope, new tendrils of feeling, a new sympathy for the English rule and race, will help them to apprehend the higher Redemption wrought for them by their and their deliverers' common Lord and Saviour.

6. Christmas thoughts in June are behind their time. During Christmas the writer was engaged on the Chapter in the Appendix about zemindars and ryots from 1793 to 1859; from repulsion of his thoughts in that season by the facts in that Chapter, the thoughts had to be laid aside;—

but they have come back with a force which he has not been able to resist, and the reader will pardon the digression if there be one; but perhaps there is none.

7. For the redemption which inspires Christmas thoughts rebukes any feeling that the rule of wrong should not be destroyed because it has lasted for four thousand years or for a hundred years, and that there is no call upon us to extirpate evil which we had no part in bringing about. Nor may we dissociate ourselves from any errors of the authors of the zemindary settlement. We have received a noble heritage from the past rulers of Bengal and of India; we are proud of their glory. Let us make their errors our own, and with loving care of their memory undo their mistakes! What they did worthily has redounded more to England's honour and glory than to theirs; what they did wrong unwittingly, let us with loyalty to worth which with all its blemishes was better than ours, set right, not alone in their memory, but because the reputation of England's sons is her own. Their deeds are her deeds; and if they have passed away, without redress of wrong unwittingly done, be it hers with profound feeling to confess error, and to the utmost of a power which abolished slavery in her West Indies, make amends to a whole people that, in a province of her East Indies, depend upon her and look only to her for delivery from else hopeless misery and moral degradation.

8. England has to purge her conscience from the sin of the zemindary settlement as she purged it from the sin of slavery. She is incited to the work by her honour and good name, the memory of her sons (Indian worthies of a not remote past), her duty to her subjects, her heavy moral obligations in the matter, on account of the terrible burden which has been unwittingly laid on the ryots, and by the claim before God of a whole people in agricultural Bengal, that they should have the same freedom and security as the peasant cultivators in Europe for the growth of their moral life. The work is not beyond England's strength, for poorer States have done the like, while the obligations of honour and duty, which leave her no escape, are seconded by material considerations of great moment and practical concern to the teeming millions in British India.

APPENDIX I.

ORIGIN AND COURSE OF PROPERTY IN LAND.

The statutory rights of property in Bengal, which the Government created in 1793, and by subsequent legislation, should be considered in connexion with the origin and course of the right of property in land, and with the law and constitution of India as they existed at the time of the acquisition of the Dewanee by the East India Company, in 1765. Sir Henry Maine's treatises on Ancient Law and on Village Communities in the East and West throw a light on the first of these subjects, which was much needed by the authors of the zemindary settlement. APP. I.

2. THE FAMILY—

I.—AGNATIC AND COGNATIC RELATIONSHIPS.

(a). The old Roman law established, for example, a fundamental difference between "agnatic" and "cognatic" relationship; that is, between the family considered as based upon common subjection to patriarchal authority, and the family considered (in conformity with modern ideas) as united through the mere fact of a common descent. Maine's Ancient Law, page 59.

(b). *Cognatic* relationship is simply the conception of kinship familiar to modern ideas: it is the relationship arising through common descent from the same pair of married persons, whether the descent be traced through males or females. *Agnatic* relationship is something very different: it excludes a number of persons whom we, in our day, should certainly consider of kin to ourselves, and it includes many more whom we should never reckon among our kindred. It is, in truth, the connexion existing between the members of the family, conceived as it was in the most ancient times. Ibid, pp. 146-47.

(c). *Cognates*, then, are all those persons who can trace their blood to a single ancestor or ancestress; or, if we take the strict technical meaning of the word in Roman law, they are all who trace their blood to the legitimate marriage of a common pair. "Cognition" is, therefore, a relative term; and the degree of connexion in blood which it indicates depends on the particular marriage which is selected as the commencement of the calculation. If we begin with the marriage of father and mother, cognition will only express relationship of brothers and sisters: if we take that of the grandfather and grandmother, then uncles, aunts, and their descendants will also be included in the notion of cognition. Ibid, p. 147.

tionship to the agnates was a necessary security against a conflict of laws in the domestic forum. * * APP. I.

(g). In Hindoo law, for example, which is saturated with the primitive notions of family dependency, kinship is entirely agnatic; and I am informed that in Hindoo genealogies the names of women are generally omitted altogether. The same view of relationship pervades so much of the laws of the races who overran the Roman empire as appears to have really formed part of their primitive usage; and we may suspect that it would have perpetuated itself even more than it has in modern European jurisprudence, if it had not been for the vast influence of the later Roman law on modern thought. THE FAMILY. Para. 2, I. Ibid, p. 151.

II.—PROGRESS OF THE FAMILY TOWARDS FORMATION OF SOCIETY.

(a). It is just here that archaic law renders us one of the greatest of its services, and fills up a gap which otherwise could only have been bridged by conjecture. It is full, in all its provinces, of the clearest indications that society in primitive times was not, what it is assumed to be at present, a collection of *individuals*. In fact, and in the view of the men who composed it, it was an *aggregation of families*. The contrast may be most forcibly expressed by saying that the *unit* of an ancient society was the family,—of the modern society, the individual. * * Ibid, p. 126.

(b). If very general language were employed, the description of the Teutonic or Scandinavian village community might actually serve as a description of the same institution in India. * * There is the village, consisting of habitations, each ruled by a despotic pater-familias. And there is constantly a council or government to determine disputes as to custom. * * I now pass to the village itself, the cluster of homesteads inhabited by the members of the community. The description given by Maurer of the Teutonic mark of the township, as his researches have shown it to him, might here again pass for an account, so far as it goes, of an Indian village. The separate households, each despotically governed by its family chief, and never trespassed upon by the footstep of any person of different blood, are all to be found there in practice. * * While it is quite true of India, that the head of the family is supposed to be chief of the household, the families within the village township would seem to be bound together through their representative heads by just as intricate a body of customary rules as they are in respect of those parts of the village domain which answer to the Teutonic common mark and arable mark. The truth is, that nothing can be more complex than the customs of an Indian village, though, in a sense, they are only binding on heads of families. Village Communities, page 107. Ibid, p. 113.

(c). In most of the Greek states, and in Rome, there long remained the vestiges of an ascending series of groups, out of which the state was at first constituted. The family, house, and tribe of the Romans may be taken as the type of them; and they are so described to us, that we can scarcely help conceiving them as a system of concentric circles, which have gradually expanded from the same point. The elementary group is the family, connected by common subjection to the highest male descendant. The aggregation of families forms the gens or house. The aggregation of houses makes the tribe. The aggregation of Ancient Law, p. 123.

APP. I. tribes constitutes the commonwealth. Are we at liberty to follow these indications, and to lay down that the commonwealth is a collection of persons, united by common descent from the progenitor of an original family? Of this we may at least be certain, that all ancient societies regarded themselves as having proceeded from one original stock, and even laboured under an incapacity for comprehending any reason except this for their holding together in political union. The history of political ideas begins, in fact, with the assumption that kinship in blood is the sole possible ground of community in political functions; nor is there any of those subversions of feeling, which we term emphatically revolutions, so startling and so complete as the change which is accomplished when some other principle,—such as that, for instance, of *local contiguity*,—establishes itself for the first time as the basis of common political action. It may be affirmed, then, of early commonwealths, that their citizens considered all the groups in which they claimed membership to be founded on common lineage. What was obviously true of the family, was believed to be true first of the house, next of the tribe, lastly of the state.

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AGGREGATION
OF FAMILIES.
Para. 2, 11.

(d). And, yet, we find that, along with this belief, or, if we may use the word, this theory of common lineage, each community preserved records or traditions which distinctly showed that the fundamental assumption was false. Whether we look to the Greek states, or to Rome, or to the Teutonic aristocracies in Ditmarsh, which furnished Niebuhr with so many valuable illustrations, or to the Celtic clan associations, or to that strange social organisation, the Slavonic Russians and Poles, which has only lately attracted notice,—everywhere we discover traces of passages in their history when men of alien descent were admitted to, and amalgamated with, the original brotherhood. Adverting to Rome singly, we perceive that the primary group, the family, was being constantly adulterated by the practice of adoption; while stories seem to have been always current respecting the exotic extraction of one of the original tribes, and concerning a large addition to the houses, made by one of the early kings. The composition of the state, uniformly assumed to be natural, was, nevertheless, known to be, in great measure, artificial. This conflict between belief or theory and notorious fact is, at first sight, extremely perplexing; but what it really illustrates is, the efficiency with which legal fictions do their work in the infancy of society.

(e). The earliest and most extensively employed of legal fictions was that which permitted family relations to be created artificially; and there is none to which I conceive mankind to be more deeply indebted. If it had never existed, I do not see how any one of the primitive groups, whatever were their nature, could have absorbed another; or on what terms any two of them could have combined, except those of absolute superiority on one side and absolute subjection on the other. No doubt, when, with our modern ideas, we contemplate the union of independent communities, we can suggest a hundred modes of carrying it out; the simplest of all being that the individuals comprised in the coalescing groups shall vote or act together according to local propinquity. But the idea that a number of persons should exercise political rights in common, simply because they happened to live within the same topographical limits, was utterly strange and monstrous to primi-

tive antiquity. The expedient which in those times commanded favor was that the incoming population should *feign themselves* to be descended from the same stock as the people on whom they were engrafted ; and it is precisely the good faith of this fiction, and the closeness with which it seemed to imitate reality, that we cannot now hope to understand.

APP. I.
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ADDITION
OF STRANGERS.
Para. 2, 11.

(f). One circumstance, however which it is important to recollect, is, that the men who formed the various political groups were certainly in the habit of meeting together periodically for the purpose of acknowledging and consecrating their association by common sacrifices. Strangers, amalgamated with the brotherhood, were doubtless admitted to these sacrifices ; and when that was once done, we can believe that it seemed equally easy, or not more difficult, to conceive them as sharing in the common lineage. The conclusion, then, which is suggested by the evidence is, not that all early societies were formed by descent from the same ancestor, but that all of them which had any permanence and solidity were either so descended, or assumed that they were. An indefinite number of causes may have shattered the primitive groups ; but wherever their ingredients recombined, it was on the model or principle of an association of kindred. Whatever were the facts, all thought, language, and law adjusted themselves to the assumption. But though all this seems to me to be established with reference to the communities whose records we are acquainted, the remainder of their history sustains the position before laid down, as to the essentially transient and terminable influence of the most powerful legal fictions. At some point of time, probably as soon as they felt themselves strong enough to resist extrinsic pressure, all these states ceased to recruit themselves by fictitious extensions of consanguinity.

(g). They necessarily, therefore, became aristocracies, in all cases where a fresh population from any cause collected around them which could put in no claim to community of origin. Their sternness in maintaining the central principle of a system under which political rights were attainable on no terms whatever except connection in blood, real or artificial, taught their inferiors another principle, which proved to be endowed with a far higher measure of utility. This was the principle of *local contiguity*, now recognised everywhere as the condition of community in political functions. A new set of political ideas came at once into existence, which, being those of *realities*, our contemporaries, and in great measure of our ancestors, *rather than* our perception of the older theory, which they vanquished and informed.

(h). The family, then, is the type of an archaic society in all the modifications which it was capable of assuming ; but the family here spoken of is not exactly the family as understood by a modern. In order to reach the ancient conception, we must give to our modern one an important extension, and an important limitation. We must lay on the family as constantly enlarged by the absorption of strangers within its circle, and we must lay a limit to the family as constantly closely simulating the reality of a family. The family as understood makes the slightest difference between a family and a political community. On the other hand, the family as understood is a family only in so far as it is by their common descent or adoption, and together it is a family.

APP. I. dience to their highest living ascendant, the father, grandfather, or great-grandfather. The patriarchal authority of a chieftain is as necessary an ingredient in the notion of the family group as the fact (or assumed fact) of its having sprung from his loins; and, hence, we must understand that, if there be any persons who, however truly included in the brotherhood by virtue of their blood-relationship, have nevertheless, *de facto*, withdrawn themselves from the empire of its ruler, they are always, in the beginnings of law, considered as lost to the family. It is this patriarchal aggregate,—the modern family thus cut down on one side and extended on the other,—which meets us on the threshold of primitive jurisprudence.

SLAVES IN THE
FAMILY.
Para. 2, II.

Ibid, p. 162.

(i). The law of persons contains but one other chapter which can be usefully cited for our present purpose. The legal rules by which systems of mature jurisprudence regulate the connection of *master* and *slave*, present no very distinct traces of the original condition common to ancient societies. But there are reasons for this exception. There seems to be something in the institution of slavery which has, at all times, either shocked or perplexed mankind, however little habituated to reflection, and however slightly advanced in the cultivation of its moral instincts. * * The relation in which servitude had originally stood to the rest of the domestic system, though not clearly exhibited, is casually indicated in many parts of primitive law, and more particularly in the typical system—that of ancient Rome. It is clear from the testimony both of ancient law and of many primeval histories, that the slave might, under certain conditions, be made the heir or universal successor of the master. * * When we speak of the slave as anciently included in the family, we intend to assert nothing as to the motives of those who brought him into it, or kept him there:—we merely imply that the tie which bound him to his master was regarded as one of the same general character with that which united every other member of the group to its chieftain. This consequence is, in fact, carried in the general assertion already made, that the primitive ideas of mankind were unequal to comprehending any basis of the connexion *inter se* of individuals, apart from the relations of family.

Ibid, p. 165.

(k). The family consisted primarily of those who belonged to it by consanguinity, and next, of those who had been engrafted on it by adoption; but there was still a third class of persons who were only joined to it by common subjection to its head—and these were the slaves. The born and the adopted subjects of the chief were raised above the slave by the certainty that, in the ordinary course of events, they would be relieved from bondage, and entitled to exercise powers of their own: but that the inferiority of the slave was not such as to place him outside the pale of the family, or such as to degrade him to the footing of inanimate property, is clearly proved, I think, by the many traces which remain of his ancient capacity for inheritance in the last resort. It would, of course, be unsafe in the highest degree to hazard conjectures how far the lot of the slave was mitigated in the beginnings of society by having a definite place reserved for him in the empire of the father. It is, perhaps, more probable that the son was practically assimilated to the slave, than that the slave shared any of the tenderness which, in later times, was shown to the son. But it may be asserted with some con-

fidence of advanced and matured codes that, wherever servitude is sanctioned, the slave has uniformly greater advantages under systems which preserve some memento of his earlier condition, than under those which have adopted some other theory of his civil degradation.* * The Roman law was arrested in its growing tendency to look upon him more and more as an article of property by the theory of the law of nature; and hence it is that, wherever servitude is sanctioned by institutions which have been deeply affected by Roman jurisprudence, the servile condition is more intolerably wretched.

APP. I.
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PATRIA
POTESTAS.
Para. 2, III.

III.—PATRIA POTESTAS.

(a). The effect of the evidence derived from comparative jurisprudence *Ibid*, p. 122. is to establish that view of the primeval condition of the human race which is known as the patriarchal theory. There is no doubt, of course, that this theory was originally based on the scriptural history of the Hebrew patriarchs in Lower Asia.* * It is to be noted, however, that the legal testimony comes nearly exclusively from the institutions of societies belonging to the Indo-European stock, the Romans, Hindoos, and Slavonians supplying the greater part of it; and indeed the difficulty, at the present stage of the inquiry, is to know where to stop, to say of what races of men it is *not* allowable to lay down that the society in which they are united was originally organised on the patriarchal model. The chief lineaments of such a society, as collected from the early chapters of Genesis, I need not attempt to depict with any minuteness.* * The points which lie on the surface of the history are these. The eldest male parent, the eldest ascendant, is absolutely supreme in his household. His dominion extends to life and death, and is as unqualified over his children, and their houses, their marriage, divorce, transfer, and sale, as over his slaves;—indeed, the relations of sonship and serfdom appear to differ in little, beyond the higher capacity which the child in blood possesses of becoming one day the head of a family himself. The flocks and herds of the children are the flocks and herds of the father; and the possessions of the parent, which he holds in a representative rather than in a proprietary character, are equally divided at his death among his descendants in the first degree, the eldest son sometimes receiving a double share under the name of birthright, but more generally endowed with no hereditary advantage beyond an honorary precedence.

(b). On a few systems of law the family organisation of the earliest *Ibid*, p. 125 society has left a plain and broad mark in the life-long authority of the father or other ancestor over the person and property of his descendants—an authority which we may conveniently call by its later Roman name of *patria potestas*.* * In every relation of life in which the collective community might have occasion to avail itself of his wisdom and strength, for all purposes of counsel or of war, the *filius familias*, or son under power, was as free as his father.* * But in all the relations created by private law, the son lived under a domestic despotism, which, considering the severity it retained to the last, and the number of centuries through which it endured, constitutes one of the strangest problems in history.

and sons under power, were not compelled to include in the household accounts; and the special name of this permissive property, *peculium*, was applied to the acquisitions newly relieved from *patria potestas*, which were called in the case of soldiers *Castrense Peculium*, and *Quasi-castrense Peculium* in the case of civil servants.

(d). Other modifications of the parental privileges followed, which showed a less studious outward respect for the ancient principle. Shortly after the introduction of the quasi-castrense *peculium*, Constantine the Great took away the father's absolute control over property which his children had inherited from their mother, and reduced it to a *usufruct*, or life interest. A few more changes of slight importance followed in the Western Empire, but the farthest point reached was in the East, under Justinian, who enacted that, unless the acquisitions of the child were derived from the parent's own property, the parent's rights over them should not extend beyond enjoying their produce for the period of his life.

(e). ** Perpetual guardianship is obviously neither more nor less than an artificial prolongation of the *patria potestas*, when for other purposes it has been dissolved. In India the system survives in absolute completeness, and its operation is so strict, that a Hindoo mother frequently becomes the ward of her own sons.

V.—DISINTEGRATION OF THE FAMILY.

(a). Ancient jurisprudence—if, perhaps, a deceptive comparison may be employed—may be likened to international law, filling nothing, as it were, excepting the interstices between the great groups which are the stones of society. In a community so situated, the legislation of assemblies and the jurisdiction of courts reaches only to the heads of families; and to every other individual the rule of conduct is the law of his home, of which his parent is the legislator.

Ibid, p. 176.

(b). But the sphere of civil law, small at first, tends steadily to enlarge itself. The agents of legal change, fictions, equity, and legislation, are brought, in turn, to bear on the primeval institutions; and at every point of the progress, a greater number of personal rights and a larger amount of property are removed from the domestic forum to the cognizance of the public tribunals. The ordinances of the government obtain gradually the same efficacy in private concerns as in matters of state, and are no longer liable to be overridden by the behests of a despot, enthroned by each hearthstone. We have in the annals of Roman law a nearly complete history of the crumbling away of an archaic system, and of the formation of new institutions from the recombined materials—institutions some of which descended, unimpaired, to the modern world, while others, destroyed or corrupted by contact with barbarism in the dark ages, had again to be recovered by mankind.* *

(c). The movement of the progressive societies has been uniform in one respect. Through all its course it has been distinguished by the gradual dissolution of family dependency, and the growth of individual obligation in its place. The individual is steadily substituted for the family, as the unit of which civil laws take account. Nor is it difficult

APP. I.

DISINTEGRATION OF THE FAMILY.

Para. 2, IV.

APP. I.

CO-HEIRS OR
EQUAL PARTI-
TION OF PRO-
PERTY.

Para. 2, V.

to see what is the tie between man and man, which replaces by degrees those forms of reciprocity in rights and duties which have their origin in the family. It is contract. Starting, as from one terminus of history, from a condition of society in which all the relations of persons are summed up in the relations of family, we seem to have steadily moved towards a phase of social order in which all these relations arise from the free agreement of individuals. In Western Europe the progress achieved in this direction has been considerable.

VI.—CO-HEIRS OR EQUAL PARTITION OF PROPERTY.

Ibid, p. 227.

(a). We know of no period of Roman jurisprudence at which the place of the heir, or universal successor, might not have been taken by a group of co-heirs. This group succeeded as a single unit, and the assets were afterwards divided among them in a separate legal proceeding. When the succession was *ab intestato*, and the group consisted of the children of the deceased, they each took an equal share of the property; nor, though males had at one time some advantage over females, is there the faintest trace of primogeniture. The mode of distribution is the same throughout archaic jurisprudence. It certainly seems that when civil society begins, and families cease to hold together through a series of generations, the idea which spontaneously suggests itself is, to divide the domain equally among the members of each successive generation, and to reserve no privilege to the eldest son or stock.

(b). Some peculiarly significant hints as to the close relation of this phenomena to primitive thought are furnished by systems yet more archaic than the Roman. Among the Hindoos, the instant a son is born, he acquires a vested right in his father's property, which cannot be sold without recognition of his joint ownership. On the son's attaining full age, he can sometimes compel a partition of the estate, even against the consent of the parent; and should the parent acquiesce, one son can always have a partition, even against the will of the others. On such partition taking place, the father has no advantage over his children, except that he has two of the shares, instead of one. The ancient law of the German tribes was exceedingly similar. The *allod* or domain of the family was the joint property of the father and his sons. It does not appear, however, to have been habitually divided, even at the death of the parent; and in the same way the possessions of the Hindoo, however divisible theoretically, are so rarely distributed in fact, that many generations constantly succeed each other without a partition taking place; and thus the family in India has a perpetual tendency to expand into the village community. All this points very clearly to the absolutely equal division of assets among the male children at death, as the practice most usual with society, at the period when family-dependency is in the first stages of disintegration.

(c). Although, in India, the possessions of a parent are divisible at his death, and may be divisible during his life, among all his male children in equal shares; and though this principle of the equal distribution of property extends to every part of the Hindoo institutions, yet, wherever public office or political power devolves at the decease of the last incumbent, the succession is nearly universally according to the rules of pri-

mogeniture. Sovereignities descend, therefore, to the eldest son; and where the affairs of the village community, the corporate unit of Hindoo society, are confided to a single manager, it is generally the eldest son who takes up the administration at his parent's death. All offices, indeed, in India tend to become hereditary, and, when their nature permits it, to vest in the eldest member of the oldest stock. Comparing these Indian successions with some of the ruder social organisations which have survived in Europe almost to our own day, the conclusion suggests itself that, when patriarchal power is not only *domestic*, but *political*, it is not distributed among all the issue at the parent's death, but is the birthright of the eldest son.

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Hindu and European institutions of property the same up to the formation of village communes. Para. 3.

3. These extracts show that primitive usages, primeval jurisprudence respecting property, were the same among the Hindoos as in the other Indo-European communities; and that, in the progress of society, one and all reached in the village commune a stage of development of such complete uniformity, that the resemblance extends down even to the presence, in the communities, of a servile class, below the proprietary members of the commune, who, yet, had proprietary rights. The incidents or steps leading to this stage of development, *viz.*, the family, the patria potestas, its decline, the disintegration of the family, the equal distribution of proprietary right among children without, generally, an actual division of the property, and the consequent growth of village communities, consisting of families with these joint and several rights in property,—these incidents precluded the possibility or idea of the growth of the Cornwallis type of Bengal zemindars. At the date of the zemindari settlement in 1793, these village communes existed throughout India, as we shall see in the next appendix, in a perfect form outside the Lower Provinces of Bengal, Behar, and Orissa, and in those provinces in only an incipient state of disintegration, in which the zemindars had usurped the functions and proprietary rights of the heads of village communities, while the members of the village communes yet retained proprietary rights of a perfect kind. “The tokens of an extreme antiquity are discoverable in almost every single feature of the Indian village communities.”—(*Maine.*)

The history of property in land in Europe diverges from that in India after reaching this point, *viz.*, the village commune. If we follow that history in Europe, we trace the course of property through centuries of war, misrule, spoliation, and social degradation of the original millions of cultivating proprietors; yet the best part of Europe is covered, still, by peasant proprietors. In India, on the other hand, custom which had embodied the rights of property in land

APP. I.

Disintegration of
joint property.

in the village commune remained crystallized for centuries of misrule, down to 1793; but though the Lower Provinces have enjoyed, since, an uninterrupted peace, yet the proprietary rights of millions have disappeared in that brief period. What, in Europe, centuries of war, rapine, spoliation, and wrong or misrule could not destroy, or benevolently spared, in India not quite one century of benevolence and law has dissolved in Bengal.

4. The tenures of land in Europe will be noticed in a separate appendix: the following extracts will help to maintain the connexion between it and this appendix.

I.—PROGRESS FROM JOINT TOWARDS INDIVIDUAL PROPERTY.

Ancient Law,
p. 269.

(a). We have the strongest reasons for thinking that property once belonged not to individuals, nor even to isolated families, but to larger societies, composed on the patriarchal model; but the mode of transition from ancient to modern ownerships, obscure at best, would have been infinitely obscurer if several distinguishable forms of village communities had not been discovered and examined. It is worth while to attend to the varieties of internal arrangement within the patriarchal groups, which are, or were till recently, observable among races of Indo-European blood. The chiefs of the ruder highland clans used, it is said, to dole out food to the heads of the households under their jurisdiction at the very shortest intervals, and sometimes day by day. A periodical distribution is also made to the Slavonian villagers of the Austrian and Turkish provinces by the elders of their body; but then it is a distribution, once for all, of the total produce of the year. In the Russian villages, however, the substance of the property ceases to be looked upon as indivisible, and separate proprietary claims are allowed freely to grow up; but then, after a given, but not in all cases of the same, period, separate ownerships are extinguished, the land of the village is thrown into a mass, and then it is redistributed among the families composing the community, according to their number. In India, not only is there no indivisibility of the common fund, but separate proprietorship in parts of it may be indefinitely prolonged, and may branch out into any number of derivative ownerships; the *de facto* partition of the stock being, however, checked by inveterate usage, and by the rule against the admission of strangers without the consent of the brotherhood.

(b). It is not, of course, intended to insist that these different forms of the village community represent distinct stages in a process of transmutation, which has been everywhere accomplished in the same manner. But though the evidence does not warrant our going so far as this, it renders less presumptuous the conjecture that private property, in the shape in which we know it, was chiefly formed by the gradual disentanglement of the separate rights of individuals from the blended rights of a community. Our studies in the law of persons seemed to show us the family expanding into the agnatic group of kinsmen: then

the agnatic group, dissolving into separate households ; lastly, the household, supplanted by the individual ;—and it is now suggested that each step of the change corresponds to an analogous alteration in the nature of ownership ; and by far the most important passage in the history of private property is its gradual elimination from the co-ownership of kinsmen.

APP. I.
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Possession and
prescription.
Para. 4, I.

II.—POSSESSION AND PRESCRIPTION.

(a). There is no principle in all law which the moderns, in spite of its beneficial character, have been so loath to adopt, and to carry to its legitimate consequences, as that which was known to the Romans as 'usucapion,' and which has descended to modern jurisprudence under the name of prescription. It was a positive rule of the old Roman law, a rule older than the Twelve Tables, that commodities which had been uninterruptedly possessed for a certain period became the property of the possessor. The period of possession was exceedingly short—one or two years, according to the nature of the commodities—and in historical times usucapion was only allowed to operate when possession had commenced in a particular way. * *

Ibid, page 284.

(b). In order to have the benefit of usucapion, it was necessary that the adverse possession should have begun in good faith—that is, with belief on the part of the possessor that he was lawfully acquiring the property ; and it was further required that the commodity should have been transferred to him by some mode of alienation, which, however unequal to conferring a complete title in the particular case, was at least recognized by the law. In the case, therefore, of a mancipation, however slovenly the performance might have been, yet, if it had been carried so far as to involve a tradition or delivery, the vice of the title would be cured by usucapion in two years at most. * * Usucapion did not lose its advantages till the reforms of Justinian. But as soon as law and equity had been completely fused, and when mancipation¹ ceased to be the Roman conveyance, there was no further necessity for the ancient contrivance ; and usucapion, with its periods of time considerably lengthened, became the prescription which has at length been adopted by nearly all systems of modern law.

Ibid, page 287.

III.—DISTINCTION BETWEEN PROPERTY AND POSSESSION.

The language of the Roman juriconsults on the subject of possession long occasioned the greatest possible perplexity. * * Possession, in fact, when employed by the Roman lawyers, appears to have contracted a shade of meaning not easily accounted for. The word, as appears from its etymology, must have originally denoted physical contact, or physical contact resumable at pleasure ; but as actually used, without any qualifying epithet, it signifies, not simply physical detention, but physical detention, coupled with the intention, to hold the thing

¹ Delivery before witnesses, by certain gestures, symbolical acts, and solemn phrases, and an intricate ceremonial, in days before written instruments of conveyance were used.

predial; that it wanted many of the characteristics of absolute slavery; and that they acquitted their service to the landlord in rendering to him a fixed portion of the annual crop. We know further that they survived all the mutations of society in the ancient and modern worlds. Though included in the lower courses of the feudal structure, they continued in many countries to render to the landlord precisely the same dues which they had paid to the Roman *dominus*; and from a particular class among them, the *coloni medietarii*, who reserved half the produce for the owner, are descended the *metayer* tenantry, who still conduct the cultivation of the soil in almost all the south of Europe.

APP. I.
—
Emphyteusis.
Para. 1, IV.

(d). On the other hand, the Emphyteusis, if we may so interpret the allusions to it in the *Corpus juris*, became a favourite, and beneficial modification of property; and it may be conjectured that, wherever free farmers existed, it was this tenure which regulated their interest in the land. The *Prætor*, as has been said, treated the Emphyteuta as a true proprietor. When ejected, he was allowed to reinstate himself by a real action, the distinctive badge of proprietary right, and he was protected from disturbance by the author of his lease, so long as the *canon*, or quit rent, was punctually paid. But, at the same time, it must not be supposed that the ownership of the author of the lease was either extinct or dormant. It was kept alive by a power of re-entry on non-payment of the rent, a right of pre-emption in case of sale, and a certain control over the mode of cultivation.

APPENDIX II.

THE LAW AND CONSTITUTION OF INDIA IN 1765.

APP. II.

Bengal was not a *tabula rasa* on which the authors of the permanent zemindary settlement were free to construct any system of land tenures that pleased them. As shown in the previous appendix, proprietary rights in land had grown up in India under a custom of singular uniformity with the customs which had shaped landed tenures in Europe; and the injunction of Parliament, that the rights of landholders in Bengal should be determined in accordance with the law and constitution of India, emanated from a body of landed proprietors whose political gospel was a tenacious adherence to the customs supporting proprietary rights in land which are a part of the law of the United Kingdom. In directing a land settlement in accordance with the law and constitution of India, Parliament intended the maintenance of local usage, and of established custom, and not the creation of landed proprietors with mere statutory rights.

2. Indeed, Parliament, had it so wished, could not have sanctioned a subversion of the rights of property in land in India, considering that even conquest could not have conferred such power of sanction, and that the Dewanny of Bengal, Behar and Orissa was acquired by the East India Company in 1765, through a bargain. The Governor and Council of Bengal wrote to the Court of Directors on 30th September 1765—

By establishing the power of the Great Mogul we have likewise established his rights; and his Majesty, from principles of gratitude, equity and policy, has thought proper to bestow this important employment of Dewan on the Company, the nature of which is, the collecting all the revenues, and after defraying the expenses of the army, and allowing a sufficient fund for the support of the Nizamut, to remit the remainder to Delhi, or wherever the King shall reside or direct.

Manifestly the Company did not acquire any right of property in land superior to that of the Great Mogul.

3. Whatever was the law and constitution of India at the time of the acquisition, in 1765, by the East India Company of the Dewanee of Bengal, Behar and Orissa, it remained unchanged in 1784, when the Parliament of England

directed the East India Company to settle and establish permanent rules for the payment of rents in accordance with "the laws and constitution of India." APP. II.

4. Sir Broughton Rouse, in his *Dissertation concerning the landed property of Bengal, 1791*, observed:—

I. The rise and progress of private property in land have been nearly similar throughout the world, always keeping pace with civilization, and an enlarged policy; and frequently, when established, resting more upon construction and usage, than upon the strict letter of written law, or deeds of tenure;—conquest seldom did, in ancient times, and is now never understood to, annihilate it; where we now find it ever so firmly fixed, it was once slender and precarious; but every mode of possession has gradually become permanent and hereditary, modified only by such arrangements as might arise from peculiar circumstances and situations. Introduction, page

II. I shall conclude the present digression upon the rights of conquest with reciting the judgment which this eminent writer (Grotius) has really given to all civilized nations, that the conquest is no more than a simple transfer of the sovereignty, not an annihilation of private property. Now, with respect to the British territories in India, a question may arise, whether they were not obtained more by compact than conquest. If they be so considered, it would surely be an aggravation of injustice to practise a severity which even conquest would not sanction (Rousseau, *Social Compact*, chapter IV), and to wrest from those who had been tolerated and protected by our predecessor in power, the possessions they had peaceably enjoyed under his jurisdiction. How much more is it incumbent on us to observe this tenderness towards our Indian subjects, when it is considered that the cession of the country, although it is now held, and will be maintained, by Great Britain in a state of sovereign dominion, was made at the time under the name of an ancient office of the Moghul Empire; the public seals and forms of which were then adopted, and have been used in all the subsequent acts of the administration, so that the people seemed only to change their governors, not their government. Pages 128 to 133.

5. Sir Broughton Rouse argued against the contention that the State was the sole proprietor of the land, both cultivated and uncultivated. His reasoning was conclusive, at least against the right of the Parliament of 1784 to give away to zemindars any property in land which belonged to ryots or cultivators; while the declarations and the Act of that Parliament show that any such spoliation of the property of the subjects of the Crown in India was far from its intention. No proprietary right which the ryot or the cultivator possessed would Parliament have deliberately transferred to some one else as zemindar without giving full compensation to the former. The rights of the so-called zemindars of 1765, and of ryots or cultivators, according to the laws and constitution of India in that day, have to be ascertained.

APP. II.

Para. 6.

6. Perhaps the ablest work on this subject is Colonel Galloway's "*Observations on the Law and Constitution of India, on the nature of landed tenures, &c., &c., as established by the Muhammadan Law and Moghul Government, 1825.*" This work will be quoted as "Law and Constitution of India."

Page 6.

I. What is the 'law and constitution of India' to which the Legislature refers as above, by which it declares that the rights of the natives shall be protected? There are two codes of law or constitutions known to us in India—the Hindu and the Muhammadan—totally distinct, however, in themselves; so that, as they never could have been, and certainly never were, *combined*, either the one or the other must be distinctly pointed at. Is it the Hindu 'law and constitution,' then, or the Muhammadan 'law and constitution,' that is meant by the Legislature as the law, &c., of India?

Page 7.

II. I must, however, pause here, and observe that, when we speak of a 'Hindu law of India,' we assume the previous existence of a paramount Hindu Government,—a fact which ought first to be established. I ask for records to show that there ever was a regular Hindu Government established over India. We know that a number of petty States, or Rajahships, existed at a late period, and even now exist. These have been magnified into kingdoms and independent principalities. Independent, indeed, they may have been who held them, as in a rude state of society every head of a family is independent and absolute; but we have no authentic account of a Hindu paramount monarchy, whilst, on the contrary, Mr. Ward notices the names of "53 separate kingdoms" in India. * * Ferishta declares that the Hindus have no written history better than the heroic romance of the Mahabarat. It is, indeed, contrary to the analogy of history to believe, if there had been a regular Government over India, that in the course of 2,000 years no one prince should have appeared to rescue his country from the Persian yoke; for that is the period between the eras of the Persian and Mahomedan conquest of India by Mahomed.

Page 10.

III. * * Supposing the Hindus to be in possession of an authentic body of law, the point would still remain—Is it the *Hindu* 'law and constitution,' or the Mahomedan 'law and constitution' which is the 'law and constitution of India.' That it is not the former I have undertaken to prove. All must deem this at least *probable*, who advert to the mere fact that six to eight centuries have elapsed since the country has been ruled by the triumphant and intolerant Moslems. We cannot believe, indeed, that a Moslem who had the *power*, even the *will to adopt* and to *administer* their law and constitution, *and to subject his Moslem conquerors to it.* * * During the whole period of the Mahomedan history in India, though we have seen that Hindus were employed even at the head of other departments, we have never heard of a *Hindu Judge*, and assuredly no Mahomedan Kazi could even have been found to administer the laws of Menu.

Page 11.

IV. The public law (I mean that publicly administered, as well as that to which the sovereign could be a party, that between the sovereign and the people) I conclude, therefore, was indisputably Mahomedan;

and that is the only law with which, in a question of this nature, we have anything to do. The more tolerant princes may have sanctioned indulgences in cases of private succession, where the interests of the Hindns alone were the subject of discussion, but *in foro judice*, a question of private right, even of inheritance among Hindns, could not have been decided except by the Mahomedan law, which accordingly provides for such questions, and declares that "they are to be determined as between Moslems," with certain limitations however, which are applicable alike to *all* non-Moslem subjects.

APP. II.

Paras. 6 & 7.

V. It is of importance to note that in the *Futava-ool-Aalungeeree*, a celebrated work on the Mahomedan law, compiled in India under the patronage of Anruigzebe expressly for the government of his Indian subjects, the chapter on the law of Inheritance, entitled "Of Inheritance among non-Moslem Subjects," is preserved entire, as compiled from the original law of Arabia. "They shall *take*," says this work, "among themselves, by *blood* and by *compact*, as Moslems *take* among themselves. The *progeny* of a marriage which is legal by *their sacred books*, though illegal by *our law*, shall not be debarred from inheriting, but the parties to a marriage, which is illegal by *our law*, shall not take in virtue of such marriage." And the test of an illegal marriage, as we find in the *Surauj*, is, "were the parties to become Moslems, would the marriage be legal?" Here, then, the Mahomedan law on the most delicate point is maintained, and an exemplary liberality at the same time shown to the innocent progeny. The same is found in the other works on the Mahomedan law; but I mention this work in particular on account of the peculiarity of its origin.

(f). This is the written "law and constitution of India," as published, under the sanction of the Emperor himself, little more than fifty years before the English power became paramount in Bengal.

7. The writer's conclusion from the foregoing, and from history, that the "law and constitution of India" was Mahomedan, may be admitted without derogating from the authority of the Hindu law, among Hindu subjects of the Mahomedan rule, in respect of proprietary right in land, and of inheritance of real and personal property. The writer himself shows that though, in theory, under the Mahomedan law, all civil rights in real property were annulled by conquest, yet the inhabitants were allowed to retain their lands; that is, they retained their proprietary rights by paying the *khirauj*, and submitting to the capitation tax; and rights thus secured were transmitted under the Hindu law of inheritance, as shown in section iv. of the preceding paragraph. But for this large exception in favour of Hindu rights and laws, the existence of village communities throughout Hindustan during seven centuries of Mahomedan rule would vitiate the author's conclusion, those communities with their rights in real property, being Hindu institutions.

APP. II.

HINDU LAW.

Paras. 8 & 9.

1. ORIGIN OF PROPERTY IN LAND.
2. INHERITANCE.
3. OTHER SOURCES OF TITLE.
4. ADMINISTRATION, AND VILLAGE COMMUNITIES.

ORIGIN OF PROPERTY IN LAND.

8. In the following quotations, the extracts from Menu are from Mr. N. J. Halhed's "*Memoir on the Land Tenure and Principles of Taxation in the Bengal Presidency*," &c., or from other authorities indicated:—

Halhed, page 1. I. "Sages who know former times consider this earth (Pristhivi) as the wife of King Prithu, and thus they pronounce cultivated land to be the property of him who cut away the wood, or who cleared and tilled it, and the antelope of the first hunter who mortally wounded it"—(*Menu*).

Origin of property in land. Halhed, page 1. II. The right so acquired might be sold, given, bequeathed, or otherwise alienated at the discretion of the individual—(*Halhed*).

Tagore Law Lectures, 1874-75, page 4. III. (referring to I). This general principle has been recognized in Germany, Java and Russia, and indeed, in most countries, and is expressly enunciated in Muhammadan law also, but it does not enable us to advance much on our present enquiry. It leaves open the question, what right of property is acquired; whether absolute and exclusive, or only limited; whether in the soil itself, or only the right to cultivate it? This question has to be answered in the silence of express law by a reference to the actual practice and the ideas of the time. Menu also speaks of the owner of land, and appears to contemplate exclusive, and perhaps individual, rights in land; although we get no further information as to their nature. The owner of a field is directed, or advised, to keep up sufficient hedges: he is entitled to the produce of seed sown by another on his land, unless by agreement with him; and to the produce of seed conveyed upon his land by wind or water. The case of a dispute between neighbouring landholders or villages as to boundaries is contemplated; and a penalty provided for forcible trespass upon another's land. These passages show that some kind of exclusive right was contemplated, and appear to recognize a right beyond that of the village; but whether in the family or the individual is not clear. The sale of lands is also spoken of in connexion with the sale of metals. (*Mr. Arthur Phillips*.)

9.—INHERITANCE.

Patton's
"Asiatic
Monarchia."

Pages 163—
171.

I. *Equal division among equal kindred*.—By the ordinances of Menu, the eldest son is entitled to greater respect than the others, and to some particular marks of attention. "After the death of the father and the mother, the brothers, being assembled, may divide among themselves the

patrimonial and matrimonial estate (Chapter IX, Art. 104). The eldest brother may take entire possession of the patrimony; and the others may live under him, as they lived under their father, *unless they choose to be separated* (Article 105).” In Article 106 it is said: “The eldest son ought, before partition, to manage the whole patrimony.” In case of extraordinary acquirements and distinguished excellence in the eldest son, particular marks of distinction are enjoined, the performance of which, however, seems to depend upon the inclination of his brothers. By the 115th Article, equality of division seems to be the general rule; the words are: “But among brothers equally skilled in performing the several duties, there is no deduction of the best in ten, or the most excellent chattel, though some trifle, as a mark of greater veneration, should be given to the first-born.” *The Code of Gentoo Laws*, published by Mr. Halhed, which have a wonderful agreement with the *Ordinances of Menu*, considering a difference in their dates of about three thousand years, and which, therefore, may be regarded as the modern explication and interpretation of those laws, are clear and explicit on this subject. The following quotations are from the second chapter, entitled *Of the Division of Heritable Property*, section 1st: “If a man dies, or renounces the world, &c., all his possessions, be they *land* or money, or effects, or cattle, or birds, go to his son. If there be several sons, *they all shall receive equal shares*.” Again, “if there be no brother, property goes to the son of the brother by blood.” “If there are several sons, *they all shall have equal shares*.” In this Code the rule seems to be, without an exception, that equal kindred share equally of land, money, or effects. In the same Code and chapter, section XI, it is said: “If a father divides among his sons the glebe, orchards, houses, rents, slave-girls, and slaves of his father and ancestors, &c., he hath no authority to give to some *more*, or to others *less*.” It, therefore, appears that, if the *zemindary* had been a *landed estate*, continuing by hereditary descent in the same family, it would not, by the Hindu law (which alone could be applicable), have descended to *one son*, where there were *many*, nor to *one relative*, where there were others of *equal kindred*; but it would have been equally divided among all the equal relatives of the last occupant; which, not having been the case, demonstrates, I think, that it could not be esteemed *landed property*. So that the circumstance upon which the European idea of landed property is founded, actually infers an opposite conclusion; and establishes with certainty that the *zemindary* appointment must have been an *office*, which, not admitting of division, could only be continued (when given to persons of the same family) in the manner that has been followed.”

II. One of the principles of the Hindu law of inheritance is, that all the male heirs possess a joint interest in patrimonial property, which is absolutely inseparable without the consent of all the parceners.

III. The Hindu law indicates to Hindu heritors their several interests in ancestral property, the alienation of any part of which, to their prejudice, without their consent, is expressly prohibited. A Hindu cannot dispose of anything by will, as the law stands, except such personal property as he may have himself acquired; the commentators, however, are at variance, and the pundits find no difficulty in finding arguments favouring either side of a question of inheritance or bequest

APP. II.

HINDU LAW.

Inheritance.

Para. 9, I.

J. N. Halhed,
1832, page 22.*Ibid*, page 26.

APP. II.

HINDU LAW.
Paras. 10 & 11.

from their works. In the Supreme Court, wills by Hindus have long been considered legal documents, and the disputes which arise in the course of administration prove never-failing sources of litigation.

10.—OTHER MODES OF ACQUIRING PROPERTY IN LAND.

Halhed, page 2.

There are seven virtuous means of acquiring property: succession, occupancy or donation, and purchase or exchange, which are allowed to all classes; conquest, which is peculiar to the military class; lending at interest, husbandry or commerce, which belong to the mercantile class; and acceptance of presents by the sacerdotal class *from respectable men*.—(*Menu*).

11.—ADMINISTRATION.

Halhed, page 6.

I. The collection of a tax of grain in kind demanded the employment of a great number of officers, and; under any other than the system adopted, their allowance would have taken up the greater portion of the revenue. The legislator, however, seems to have been fully aware that the agency of individuals employed *in the vicinity of their homes may be purchased at a cheaper rate than when their duty calls them to a distance from their families*. The public officers of revenue and police in each district were, accordingly, selected from among the proprietors of the immediate neighbourhood.

These officers, denominated *gram adhiputi*, were appointed in every parish, and were amenable to overseers of ten parishes, who were under the direction of superintendents, whose jurisdiction extended over 20 parishes, who were subject to the authority of presidents of districts containing 100 parishes, who, in their turn, were subordinate to governors of provinces consisting of a thousand parishes. "Let him appoint a lord¹ of one town² with its districts; a lord of ten towns, a lord of twenty, a lord of a hundred, and a lord of a thousand".—(*Menu*).

II. The system under which these functionaries were remunerated for their trouble and responsibility was as follows:—

The *gram adhiput*, or overseer of a single parish,³ received as his allowance the quantity of food, drink, firewood, and other articles which the other inhabitants of his parish were bound to provide daily for the public service.⁴ The superintendent of ten villages enjoyed the whole produce of as much land as could be tilled by two ploughs (drawn by six bullocks each), that is to say, the proportion of the land tax for so much of his own land was remitted; the superintendent of twenty villages paid no tax for five plough-lands of his property; the rulers of districts appropriated the tax of a small parish; the governors of provinces, the tax of a large one, to their own purposes. Thus—

(a). "Such food, drink, wood and other articles as, by law, should be given each day to the king by the inhabitants of the township, let the lord of one town receive as *his perquisite*."

¹ *Adhiput* does not mean lord, but superintendent.

² The word *gram* signified not a town, but a tract of country in cultivation with it village;—it means, rather, a parish.

³ The word *gram* signifies grange or village, with the land belonging to it.

⁴ This food, &c., is by the commentators upon the laws of *Menu* admitted to be independent of, and in excess of the land tax.

(b). "Let the lord of ten towns enjoy the produce of two plough-lands (or as much ground as can be tilled with two ploughs, each drawn by six bulls); the lord of twenty, that of five plough-lands; the lord of hundred, that of a village or small town; the lord of a thousand, that of a large town."—(*Menu*).

APP. II.
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HINDU LAW.
Administration.
Para. 11, I.

The reading in the here quoted slokh may seem somewhat obscure, as a grant of the land itself might be inferred from the translation: this, however, was not the case. There is, however, a slight obscurity in the text ("two plough-lands' produce¹ let him enjoy"); and perhaps this obscurity may be attributed to a sacrifice made in favour of conciseness and versification. The Government could not transfer that which it never possessed, viz., a paramount exclusive proprietary interest in the soil; it could lay claim to a portion of the produce only, not as rent, but as tax revenue, and it provided for its officers, who collected it by an assignment of a portion of the revenue it was entitled to by law. By the remission of a portion of the tax to the proprietors who held official situations, an amount of individual and local influence by no means trivial was secured to the State for a very inconsiderable sacrifice. As these functionaries were appointed by the ruling power, they were also liable to dismissal from office for irregularities or misconduct, and to very heavy penalties in addition.

(c) "Since the servants of the king, whom he has appointed guardians of the districts, are generally knaves, who seize what belongs to other men, from such knaves let him defend his people."

(d) "Of such evil-minded servants as wring wealth from subjects attending them on business, let the king confiscate all their possessions, and banish them from his realm".—(*Menu*).

12.—VILLAGE COMMUNITIES.

I. As the most numerous class of the Hindu population, that of the Sudras, was declared incapable of possessing any property whatever, it follows that no member of it could be a landholder, under the ancient Hindu Governments. The proprietary interest in the soil was vested in the Brahmins, Kheytries, and Byres, and the Burrun Shunker or intermediate class, under the original Hindu Governments.

Halhed, pages 9 and 10.

(a). "But a man of the servile class, whether bought or unbought, he may be compelled to perform servile duty, because such a man was created by the self-existent for the purpose of serving Brahmins."

(b). "A Sudra, though emancipated by his master, is not released from a state of servitude; for of a state which is natural to him, by whom can he be divested?"—(*Menu*).

II. The Brahmins and Khetries, considering manual labour as inconsistent with their dignity, and, to a certain extent, with their religious purity, avoided all personal interference with agricultural operations as degrading and even sinful, and not to be resorted to, except in cases of extreme necessity; but they had no objection to profit by the advantages afforded by landed possessions, and were content to realize all

Halhed, page 11.

¹ Colonel Briggs, quoting this text, adds in a note:—"By the produce is meant the revenue derivable from the land to the Crown."—*Land Tax*, page 23.

APP. II. the benefits which the legislator would seem (by declaring agriculture as a profession, their peculiar calling) originally to have designed to secure to the Byre caste, by imposing on their Sudra servants and slaves the labours of tillage, while they appropriated the crops.

HINDU LAW.
Village commu-
nities.

Para. 12, section
III, contd.

III. LIEUTENANT-COLONEL BRIGGS—

Land tax in
India.
Page 35.

(a). Although Menu has embraced all subjects of legislation, and has entered into much detail regarding the rights of landed property, he has laid down no rules for the internal economy of villages and towns; a circumstance the more remarkable, as this part of the Hindu constitution appears once to have been universal throughout the country.

Ibid.

(b). Each village in India contains within itself the seeds of an entire republic or government; wars, deluges, pestilence or famine may break it up for a time, but it has a tendency to re-unite, which nothing can prevent. It consists of an agricultural corporation, owning all the land, at the head of whom is a chief elected by the corporation. It has also at least one individual of all the crafts necessary to agriculture and essential to the comforts of rural life, *viz.*,—(1) the carpenter; (2) blacksmith; (3) shoemaker; (4) juhar (acts as scout guide, frequently as watchman); (5) cordwainer,—provides all leather ropes, thongs, whips, &c., used by the cultivators; (6) potter; (7) barber; (8) washerman; (9) priest of the temple, or (10) school master and astrologer, (11) bard or village poet; (12) distributor of the water.

Land tax in
India, page 37.

(c). The land belonging to every township is accurately defined, and the village officers above-mentioned are retained on the spot by the assignment of a portion of it to each. These lots are usually situated on the borders of the village limits, in order to give to the hereditary officers a perfect knowledge, under all circumstances, of the boundary of the township.

age 39.

(d). The whole land seems originally to have been divided into ten, twenty, or more shares, each bearing the names of the first settlers.

id.

(e). The Government portion was originally paid in kind, and its amount was taken from the gross produce, estimated according to the quantity of seed sown, or according to the actual crop. Each cultivator also contributed something as fees to all the village officers who received these fees in addition to the lands they occupied free of tax to the king, *viz.*,—

report, page 10.

(1).—The *gram-adikar*, or village mayor, originally elected by the people, was at the same time the representative of the inhabitants and of the Government. He decided disputes, either in person or by convening a court of arbitration; he was the head of the police; and the whole community was bound to produce to the Government either the property or the thief, in case of robberies, and the guilty in more serious cases, such as of murder.

(2).—*Gram-lekuk*.—Besides the Government tax, an extra contribution was made for village expenses, not unlike that of the parish rates in Europe. The most minute details of the transfer and sale of land, of rents and contracts, as well as of receipts and disbursements, were recorded by the village clerk, or *gram-lekuk*, under authority of the *gram-adikar*, whose accounts were always open to inspection.

(f). Thus each village was in itself a small state; several villages formed a district, over which also presided a chief denominated *Des adikar*, and under whom was also a record-keeper denominated *Des lekuk*.¹ The former superintends all the villages of his department as the *gram-adikar* presided over the concerns of his village, and the *des lekuk* received from the village clerks their accounts, and presented an abstract to the Government. These latter officers were usually conciliated by the villages by assignments of land from each, and were paid by the Government by a percentage of the collections. The proportion of each was not defined, and seems to have varied in different parts; though for the most part a tenth of the revenue divided between these district chiefs appears to have been the fee of office.

(g). It was not unusual for the king to maintain his army, and to reward the officers and nobles of his courts, by assignments on the revenue; and, although those chieftains resided in the districts themselves, they had no authority to interfere in the ancient usages of the people, but merely to receive the king's dues, permitting the village communities to manage their own concerns.

IV.—Deccan. ELPHINSTONE (HON'BLE MOUNTSTUART).—

(a). In whatever point of view we examine the native government in the Deccan, the first and most important feature is the division into villages or townships. These communities contain in miniature all the materials of a State within themselves, and are sufficient to protect their members if all other governments were withdrawn.

(b). Each village has a portion of ground attached to it, which is committed to the management of the inhabitants. The boundaries are carefully marked and jealously guarded. They are divided into fields, the limits of which are exactly known; each field has a name, and is kept distinct, even when the cultivation of it has been long abandoned. The result of the several reports received from Mr. Elphinstone is his conviction "that a large portion of the ryots (cultivators) are the proprietors of their estates, subject to the payment of a FIXED LAND-TAX to Government, that their property is hereditary and saleable, and they are never dispossessed while they pay their tax; and even then they have for a long period (at least thirty years) the right of re-claiming their estate on paying the dues of Government." Again, an opinion prevails throughout the Mahratta Country, that under the old Hindu government all the land was held by (meerassies) hereditary landlords, and that the oopries (tenants) were introduced as the old proprietors sunk under the tyranny of the Mahomedans.

(c). (*Colonel Briggs continues*).—"The Collector of French states, the general divisions of husbandmen are two: *tulkaries*, men who cultivate their own fields; and *oopries*, or tenants who cultivate lands not their own. A third class exists, called *assachary*, a temporary tenant, who, residing in one village, comes from another to take land

APP. II.

HINDU LAW.
Village communities.

Para. 12, section III, contd.

Report, p. 40.

Land tax in India, page 41.
Colonel Briggs Land tax in India, pages 7 & 8.

¹ The appellation of the village headmen and clerks and of the district chiefs of their record-keepers, differs in the various tongues of the several nations where it is found, though the duties and perquisites are everywhere of a similar nature. The term here given is derived from the Sanskrit *lekuk*.

APP. II.

HINDU LAW.

Village communities.

Para. 12,
section IV,
contd.

in another. The *tulkary* is a mirasdar. *Tul* signifies a field, and *tulkary* the owner of land; he is considered, and universally acknowledged by the Government, to have the property of the lands he cultivates. I am yet uninformed," says the Collector, "and perhaps it may never be clearly established, at what period the Deccan landlords acquired their rights to the property of the soil, by purchasing it from the Government, or the village; or whether it has always been inherent in them, and that the Government has either usurped their rights in some instances, or broken through a custom of allowing lands *lying waste from a deficiency of population*, afterwards to become the inheritance of the multiplying descendants of the original number of landed proprietors."

(d). By the original proprietors (continues Colonel Briggs), no doubt is meant those persons who obtained the first possession of the land of the village; and thus we perceive the remains of the ancient agricultural body corporate to exist in the Deccan, though for several centuries the country was under the foreign yoke of the Mahomedans. Again, "The Deccan landlord is proud of his situation, and is envied among his brethren, who are the cultivators of lands not their own; the feeling of attachment to their fields is remarkably keen, and no consideration but the utmost pecuniary distress will induce them to abandon their rights of proprietorship. These rights are either inherited or purchased; and it is a remarkable circumstance, that in the body of the deed of sale it is invariably recorded that he who sells his land has begged of him who buys to become the proprietor. It would seem that this insertion is deemed requisite as a safeguard to the buyer, in consequence of the well-known reluctance of all landlords to part with their lands, and to show that no subterfuge was used to force or trick them from the original proprietor. The *tulkary* pays a land-rent to Government according to the extent and quality of his lands. *This land-rent is supposed to admit of no increase*. Such is this acknowledged right of the proprietor in most parts of the country."

(e). In the administration of the office of Magistrate, the *potel*, or chief of the landed corporation, was here, as in other parts, the head of the village and the representative of the people as well as of the Government. The existence of the local officers in the Mahratta Country is thus described,—“A *turuf* is composed (Mr. Elphinstone's Report) of an indefinite number of villages; it is under no particular officer. Several *turufs* make a *pergunnah*, which is under a *desmook* (literally, chief of the district) who performs the same functions towards the *pergunnah* as the *potel* towards the village. He is assisted by a *des pandia*, (writer of the district) who answers to the *koolkurney* or village register.

(f). It is universally believed in the Mahratta Country, that the *des mooks*, *des pandias*, &c., were all officers appointed by some former government; and it seems probable that they were the revenue officers of the Hindu government. These officers still hold the lands and fees that were originally assigned them as wages, and are considered as servants of the Government; but the only duty they perform is to produce these old records, when required, to settle disputes about land by a reference to those records, and to keep a register of all new grants and transfers of property either by Government or by individuals. Mr. Elphinstone rates the *des mook's* profits at 5 per cent. of the collections,

together with as much more in rent-free land ; and half of these perquisites to the *des pandia* or district register. App. II.

V. RAJPOOTANA AND MALWA.—Colonel Briggs describes the existence in these States of the same village system as in the Deccan, but with this modification, that under a feudal system which prevailed, the Hindu landholders who constituted the hereditary village landed proprietary paid revenue to feudal superiors to whom the revenue had been assigned as a reward for services, or as a provision for the support of military establishments. Hindu law. village commu- nities. Part II, section VI, code. Pages 31 to 107. Report of Select Committee, E. I. Affairs, 1833, 1834, 1831-32, vol. 1.

VI. NORTH-WESTERN PROVINCES

APP. II.

HINDU LAW.

Village communities.

Para. 12, section VI, contd.

Q. 2240.—Are the Committee to understand that in the answer you have given you allude to the right of possession which is inherent in the actual cultivator of the land, or do you allude to a class of persons living upon rents paid to them by persons residing upon the land? No; I mean the former, though they have persons often assisting them in their cultivation. The most perfect description of property that I have personally met with in India is found in that territory in the manner I have endeavoured to describe.

Ibid, page 305,

(b). *Mr. Holt Mackenzie, 1832*.—In many places extensive tracts are held by communities of cultivating zemindars (commonly called with us *biswadars*) who assert, as colonists or conquerors, a property, several or common, in the lands lying within defined boundaries, whether cultivated or waste, subject, in certain cases, to the rights of the preceding class (*khodkhast*, or cultivators having rights of proprietors in the fields they occupy). From these latter they are to be distinguished chiefly by this, that besides a fixed title of occupancy in the fields actually cultivated by them, they have a right, corporate or several, in all lands lying within a specific division of territory, not appropriated to the use of others, and in the advantages, actual or reversionary, derivable from occupied land, not taken by Government to itself, nor specifically admitted to belong to others, which right, though it does not go the length of barring Government from the appropriation or assessment of the waste (the prerogative of drawing revenues from every acre not alienated seems to outweigh all private interests), gives a preferable title of occupancy and a preponderating influence in the management of village affairs. * * * The two classes I have last mentioned, *viz.*, the fixed occupants of fields, and the *biswadars*, or co-parcenary occupants of villages, appear to be the only ones who have a permanent title of property, independently of grant from, or permanent engagement with, the Government. (Rajahs or chiefs continued in the management of extensive tracts from political motives, or from a regard to their hereditary exercise of power, I regard as a part of the Government.)

(c). *Sir C. T. Metcalfe*.—The village communities are little republics, having nearly everything that they want within themselves, and almost independent of any foreign relations. They seem to last where nothing else lasts. Dynasty after dynasty tumbles down: revolution succeeds to revolution; Hindoo, Patan, Mogul, Mahratta, Sikh, English, are all masters in turn, but the village communities remain the same. In times of trouble they arm and fortify themselves; an hostile army passes through the country: the village communities collect their cattle within their walls, and let the enemy pass unprovoked. If plunder and devastation be directed against themselves, and the force employed be irresistible, they flee to friendly villages at a distance, but when the storm has passed over, they return and resume their occupations. If a country remain for a series of years the scene of continued pillage and massacre, so that the villages cannot be inhabited, the scattered villagers nevertheless return whenever the power of peaceable possession revives. A generation may pass away, but the succeeding generation will return. The sons will take the place of their fathers, the same site for the village, the same positions for the houses, the same lands will be re-

occupied by the descendants of those who were driven out when the village was depopulated, and it is not a trifling matter that will drive them out, for they will often maintain their post through times of disturbance and convulsion, and acquire strength sufficient to resist pillage and oppression with success.

(2). The village constitution which can survive all outward shocks, is, I suspect, easily subverted with the aid of our regulations and courts of justice; by any internal disturbance; litigation above all things, I should think, would tend to destroy it.

(3). In many instances there are resident cultivators who, though not claiming ownership, have a right, by the usage of the village, to retain the land which they cultivate.

APP. II.

HINDU LAW.

Village communities.

Para. 12 contd.

VII. MADRAS PRESIDENCY.

(a). *Fifth Report*.—Of the internal form and constitution of the village communities in the Northern Circars, the Committee of Circuit have afforded only an imperfect account, but later and more particular enquiries have clearly shown that they do not differ in their nature from those existing in the modern territories in the Peninsula. A village, geographically considered, is a tract of country comprising some hundreds or thousands of acres of arable and waste land; politically viewed, it resembles a corporation or township. Its proper establishment of officers and servants, consisting of the following descriptions (the detail is of the same classes of village officers as in Hindoostan generally, see Section III b). Under this simple form of municipal government, the inhabitants of the country have lived from time immemorial. The boundaries of the villages have been but seldom altered; and though the villages themselves have been sometimes injured, and even desolated by war, famine and disease, the same name, the same limits, the same interests, and even the same families, have continued for ages. The inhabitants give themselves no trouble about the breaking up and division of kingdoms; while the villages remain entire, they care not to what power it is transferred, or to what sovereign it devolves; its internal economy remains unchanged; the Potal is still the head inhabitant, and still acts as the Petty Judge and Magistrate and Collector or renter of the village.

(b). *Mr. Place, 6th June 1799 (Fifth Report)*.—I draw my first argument in favour of the hereditary right of the indigenous natives and husbandmen to the usufructuary property of the soil, from the division of the land into shares, and from the appointment of a distinct class of people to record them; to note down every variation that takes place, and to keep all accounts of the cultivation and produce. As I have already said, these divisions are supposed to have taken place at the original settlement of each village, and were, to a greater or smaller number, according to the number of original settlers or of labouring servants that they brought with them; for I presume I need not explain that the latter, doomed to the meanest offices, can acquire no property in land. Had they been regulated by any other rule, villages of the same extent would have been divided into the same number of shares; whereas whilst one is divided into ten, another having the same quantity of land annexed to it may be divided into 100 shares, but all equal. Every

APP. II.

HINDU LAW.

Village communities.

Para. 12 contd.

Land Tax, page 176.

original share may be reckoned a freehold, which, although it may have been subsequently sub-divided into several similar ones, they all hold of the proprietor of the original remainder, who retains a pre-eminence over them, and to whom, I imagine, they were originally considered to owe service, for his right of pre-eminence is still so tenaciously asserted, and so unequivocally acknowledged, that when making the late settlement of the Jughire, a few *meerasadars* only of villages, where I know them to be very numerous, appeared to rent them. I was told that they were the proprietors of the original shares; that all other were sub-meerasadars and would agree to whatever terms their principals entered into: and although I thought it proper that all should give their consent personally or in writing, yet I found that the sub-meerasadars invariably considered themselves dependent upon the proprietor of that share from which they had ramified, if I may use the expression.

VIII. BENGAL—LOWER PROVINCES.

1. *Colonel Briggs*.—The system of the former government embraced the realization of the revenue from the value of the crops annually raised, a scheme which continued under the Mahommedans, though evidently belonging to a period anterior to their invasion. By this rule the produce of the land, whether taken in kind, or *estimated in money*, was understood to be shared in distinct proportions between the cultivator and the Government. In Bengal it was estimated that the husbandman received only two-fifths, and the remainder was sub-divided between the latter and the zemindar and village officers; of this the zemindar received, as COLLECTOR, one-tenth, or about 3-50ths of the whole. Smaller portions went to the mocuddum (the village Hereditary Magistrate), the Patwarry (village accountant), &c. Provision was also made in the same way for the Canoongoe, or district registrar.

2. [Thus far the extract from Colonel Briggs' *Land Tax, &c.*, shows merely that, in the Lower Provinces of Bengal, there was an organization of village officers similar to that in the rest of Hindoostan; but it does not state explicitly that there was a village proprietary corresponding to that in other parts of India. The duties of the principal village officers, however, imply the existence of a village proprietary, and it will be seen in a subsequent paper in the appendix, that the rights of the khodkasht and pykasht cultivators in the Lower Provinces were identical with those of corresponding members of village communities in the North-Western Provinces and the Madras Presidency.]

Ibid., page 193.

3. In making the new settlement for Benares, a due respect was paid to the experience of the Resident, Mr. Jonathan Duncan, and it is a remarkable fact that, with all Lord Cornwallis' repugnance to the principles and practice of Asiatic governments, he adopted them entirely in the settlements of Benares, as will be seen in the sequel. It is pretended that the Hindoo institutions here *were more perfect than, in*

Bengal, but there is no just reason for supposing so. Here the Resident had enquired and made himself master of the subject; in other parts the public officers were absolutely "*prohibited*" as we have seen "*from going into local scrutiny.*" Here we find the village occupants of the land termed zemindars. They are thus described in the Fifth Report,—"*the village zemindars paying revenue to Government are said to belong to a joint partnership, denominated putteedar or sharers, descended from the same common stock. Some, however, had their separate shares, while others remained united with the principal of the family, or the headmen of the brethren, one or more, whose names were usually inserted in all agreements for land revenue. Besides these village zemindars, there were others denominated talukdars, who have the management of a greater or lesser number of villages, with the heads of whom, in conjunction with the partners, they make their settlements.*"

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Para. 12 contd.

Page 260 et seq.

IX. SUMMARY—INDIA.

Maine's Ancient Law.—There is, however, one community which will always be carefully examined by the inquirer who is in quest of any lost institution of primeval society. How far so-ever any such institution may have undergone change among the branch of the Indo-European family which has been settled for ages in India, it will seldom be found to have entirely cast aside the shell in which it was originally reared. It happens that among the Hindoos we do find a form of ownership which ought at once to rivet our attention from its exactly fitting in with the ideas which our studies in the law of persons would lead us to entertain respecting the original condition of property. The village community of India is at once an organized patriarchal society and an assemblage of co-proprietors. The present relations to each other of the men who compose it are indistinguishably confounded with their proprietary rights, and to the attempts of English functionaries to separate the two may be assigned some of the most formidable miscarriages of Anglo-Indian administration. The village community is known to be of immense antiquity. In whatever direction research has been pushed into Indian history, general or local, it has always found the community in existence at the farthest point of its progress. A great number of intelligent and observant writers, most of whom had no theory of any sort to support concerning its nature and origin, agree in considering it the least destructible institution of a society which never willingly surrenders any one of its usages to innovation. Conquests and revolutions seem to have swept over it without disturbing or displacing it, and the most beneficent systems of government in India have always been those which have recognized it as the basis of administration.

The mature Roman law, and modern jurisdiction following in its wake, look upon co-ownership as an exceptional and momentary condition of the rights of property. This view is clearly indicated in the maxim which obtains universally in Western Europe, '*Nemo in communione potest invitatus detineri*' ('No one can be kept in co-proprietorship against his will'). But in India this order of ideas is reversed; and it may be said that separate proprietorship is always on its

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HINDU LAW.

Village communities.

Para. 12, section IX, contd.

Page 262.

to become proprietorship in common. The process has been adverted to already. As soon as a son is born, he acquires a vested interest in his father's substance; and on attaining years of discretion, he is even, in certain contingencies, permitted by the letter of the law to call for a partition of the family estate. As a fact, however, a division rarely takes place even at the death of the father, and the property constantly remains undivided for several generations; though every member of every generation has a legal right to an undivided share in it. The domain thus held in common is sometimes administered by an elected manager, but more generally, and in some provinces always, it is managed by the eldest agnate, by the eldest representative of the eldest line of the stock. Such an assemblage of joint proprietors, a body of kindred holding a domain in common, is the simplest form of an Indian village community; but the community is more than a brotherhood of relatives, and more than an association of partners. It is an organized society, and, besides providing for the management of the common fund, it seldom fails to provide by a complete staff of functionaries for internal government, for police, for the administration of justice, and for the apportionment of taxes and public duties.

The process which I have described as that under which a village community is formed may be regarded as typical. Yet it is not to be supposed that every village community in India drew together in so simple a manner. Although in the north of India the archives, as I am informed, almost invariably show that the community was founded by a single assemblage of blood relations, they also supply information that men of alien extraction have always from time to time been engrafted on it; and a mere purchaser of a share may generally, under certain conditions, be admitted to the brotherhood. In the South of the Peninsula there are often communities which appear to have sprung, not from one, but from two or more families; and there are some whose composition is known to be entirely artificial;—indeed, the occasional aggregation of men of different castes in the same society is fatal to the hypothesis of a common descent. Yet in all these brotherhoods either the tradition is preserved, or the assumption made, of an original common parentage. Mountstuart Elphinstone, who writes more particularly of the southern village communities, observes of them (*History of India, I, 126*):—"The popular notion is, that the village landholders are all descended from one or more individuals, who settled in the village; and that the only exceptions are formed by persons who have derived their rights by purchase, or otherwise, from members of the original stock. The supposition is confirmed by the fact, that, to this day, there are only single families of landholders in small villages, and not many in large ones; but each has branched out into so many members, that it is not uncommon for the whole agricultural labour to be done by the landholders, without the aid either of tenants or of labourers. The rights of the landholders are theirs collectively; and though they almost always have a more or less perfect partition of them, they never have an entire separation. A landholder, for instance, can sell or mortgage his rights; but he must first have the consent of the village, and the purchaser steps exactly into his place, and takes up all his obligations. If a family becomes extinct, its share returns to the common stock."

Page 264.

The village community, then, is not necessarily an assemblage of blood relations; but it is *either* such an assemblage, or a body of co-proprietors, formed on the model of an association of kinsmen. The type with which it should be compared is evidently not the Roman family, but the Roman *Gens*, or House. The *Gens* was also a group on the model of the family; it was the family extended by a variety of sections, of which the exact nature was lost in antiquity. In historical times, its leading characteristics were the very two which Elphinstone remarks in the village community. There was always the assumption of a common origin, an assumption sometimes notoriously at variance with fact; and, to repeat the historian's words, "if a family became extinct, its share returned to the common stock." In old Roman law, unclaimed inheritances escheated to the Gentiles. It is further suspected by all who have examined their history, that the communities, like the Gentiles, have been very generally adulterated by the admission of strangers, but the exact mode of absorption cannot now be ascertained. At present they are recruited, as Elphinstone tells us, by the admission of purchasers with the consent of the brotherhood. The acquisition of the adopted member is, however, of the nature of a universal succession; together with the share he has bought, he succeeds to the liabilities which the vendor has incurred towards the aggregate group. He is an *emptor familiæ*, and inherits the legal clothing of the person whose place he begins to fill.

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Para. 14.

13. Thus, the Hindu law of real property found a clear and distinct expression in the village communities, which were co-extensive with, and peculiar to, the Hindu system throughout India. The joint and several property of members of the village commune in the land of one's own village is incompatible with the theory of the exclusive proprietary right of a zemindar in several villages. Hence, the prevalence of village communities throughout India raises a presumption of full proprietary right of members of the village commune, that is, of the village cultivators, and throws the burden of proof on any zemindar who might claim absolute and exclusive proprietary right in the lands of several villages, or of a village. In the permanent settlement, however, the zemindar was relieved of this burden of proof by the Government laying the burden on the ryots.

MUHAMMADAN LAW.

1. ORIGIN OF PROPERTY IN LAND.
2. INHERITANCE.
3. OTHER SOURCES OF TITLE.
4. ADMINISTRATION AND VILLAGE COMMUNITIES.

14.—ORIGIN OF PROPERTY IN LAND.

I. The explanation of the origin of landed property which is delivered by Menu is not exceeded in correctness by any of the writers of the West. Wilks' Mysore, page 103.
"Cultivated land is the property of him who cut away the wood, or

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MAHOMEDAN
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Para. 16.

Halhed, p. 39.

who first cleared and tilled it ;” and the exact coincidence of this doctrine with that of the early Muhammadans is worthy of particular remark. “ Whosoever cultivates waste lands does thereby acquire the property of them ; a zummee (infidel) becomes proprietor of them in the same manner as a Mussulman.”

II. “ He who brings into life land which was dead, he is the owner thereof.”

15.—INHERITANCE.

I. The law of equal division holds both with respect to Muhammadans and with Hindus (*James Mill*).

-Inheritance.
3rd Report, Se-
lect Committee,
1832, Q. 3235.
H.E. Cole-
brooke's Hus-
bandry of
Bengal, page 91.

II. Estates of Muhammadans are more rapidly subdivided than those of Hindus. The law of family partnership generally preserves the unity of the estates held by the Hindus. This, however, is not the most material difference. The Hindu law divides property in equal shares among heirs of the same degree, but without commonly admitting the participation of females. In general, these only inherit in default of male heirs. The Arabian law assigns to several relations their specific portion as allotted by the Koran, and divides the remainder of the inheritance among the residuary heirs, giving equal shares to all males of the same degree, and half the portion of males to females in the same degree of consanguinity.

16.—OTHER TITLES TO LAND.

Law and Consti-
tution of India,
page 32.

I (a). The Mahomedan laws which were in force in Hindoostan were those of the Huneefeeah Soonees. With the laws relating to land, which prevail in Arabia, India was not concerned, because all countries conquered by the Mahomedans were brought under the law laid down by them on the occasion of their first conquests, *viz.*, of the Sūwaūd of Erauk, Syria and Egypt.

Part, pages 13
and 34.

20. (b). “ The land of the Sowad is the property of those who live in it ; they have a right to sell it, or to hold it in possession. Because the Imam, when he has conquered a country by force of arms, may confirm the people in possession of it, and may impose upon it, and upon the heads of the people, a tax or tribute, after which the land remains the property of the people.” The land or Sowad of Irak is here mentioned ; but it was not the intention of the author of the Hidayah to declare proprietary rights restricted to the inhabitants of that country. He quotes the principles obtaining in Irak, because, in that province, after its subjection by the Khalif Oomar, they were there first settled by the Subahch, or council, and thus became the precedent for establishing the khiraj in other countries. India was brought under the principles or law of settlement of the land of the Sowad of Irak, because the people paid the *jizeet* or capitation tax, and consented to pay the khiraj.

Page 32.
1832, p. 325
1832, p. 325

(c). “ The land of the Sūwaūd of Erauk is the property of its inhabitants. They may alienate it by sale and dispose of it as they please ; for when the Imam conquers a country by force of arms, if he permit the inhabitants to remain on it, imposing the *kuraaj* on their lands and the *jizeet* on their heads, the land is the property of the inhabitants, and since it is their property, it is lawful for them to sell it, or to dispose of it, as they choose.”

(d). On the whole, then, according to the Hunefeeah law, if a Moslem army conquered a non-moslem province or kingdom by force of arms, and the conqueror chose to suffer the inhabitants to remain in it, his duty would be, either himself, or by Commissioners (as Oomar did in settling the khurauj of the province of Erauk) to partition the land among them and to fix the land tax. Those who share in this partition are the proprietors of the soil for ever, and may not be disseized of it, without their consent, so long as they pay the land tax.

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Law and Con-
stitution, &c.,
page 40.

II. I shall now notice the different kinds of tenures or modes by which property in lands can be acquired, as recognized by the Mahomedan law. These are—

Law and Con-
stitution of
India, pages 63
to 67.

a. *Partition* among the conquerors, when the lands are conquered.

b. By fixing the *khirauj* upon the lands of conquered inhabitants, by specific assessment (and imposing also the capitation tax), they being suffered to remain upon the lands.

c. By *compromise* entered into with the inhabitants of a country before conquest.

Other titles to
land.

d. By the *cultivation of waste land*, when with the express sanction of Government. These four are the original tenures of land.

e. *Purchase, exchange, or other mutual compact* for equivalents.

f. *Dower.*

g. *Gift; bequest.*

h. *Inheritance.*

i. *Wuqf or endowment.*

It will be perceived that none of these tenures convey any right whatever to exemption from the public revenue.

17.—ADMINISTRATION.

LAW AND CONSTITUTION OF INDIA.

I a. The great Hunefeeah lawyer, Shums-ool-Aymah-oos-Sumkohee, adds: "It is proper that the sovereign appoint an officer for the purpose of collecting the khurauj from the people in the most equitable manner. He shall collect the khurauj to the best of his judgment, in proportion as the produce is reaped. When lands produce both a rubbeaa crop and a khureef crop, when the rubbeaa crop is gathered, he shall consider, according to the best of his judgment, how much the khureef crop is likely to produce, and if he think it will yield as much as the rubbeaa, he shall take half the khuraj from the produce (lit.: "the grain") of the rubbeaa, and postpone the other half to be taken from the produce of the khureef." Here we see the minutest detail, and who are the parties? the sovereign, or his servant, and the cultivator.

b. The truth is, that between the sovereign and the *rubb-ool-arz* (who is properly the cultivator or "lord of the land"), no one intervenes who is not a servant of the sovereign; and this servant receives his hire, not out of the produce of the lands over which he is placed, but from the public treasury, as is specially mentioned by every lawyer.

c. And the only servant that intervenes between the sovereign and the cultivator is one collector. Thus—

"It is proper," says the learned *Shums-ool-Aymah*, "that the sovereign appoint collectors to collect the khurauj in the most equitable manner

from the people." These collectors were called *amil-teen* (the plural of *amil*); and accordingly Akbar appointed a collector over every crore of dams, who was called *amilguzzar*, and the name is preserved to this day (1825) in the province of Oudh and other parts of India beyond the Company's territories. "And," says Akbar, "let the *amilguzzar* transact his business with each husbandman separately, and see that the revenues are demanded and received with affability and complacency." And again, "let him agree with the husbandman to bring his rents himself that there may be no plea for employing intermediate mercenaries. When the husbandman brings his rent, let him have a receipt for it signed by the treasurer" (*Ayecn Akbaree*). Here the written law says, the people shall pay to the Government collectors, "and the practice of India was such." *No intermediate mercenaries shall be suffered*, says Akbar, to come between the sovereign and the cultivator.

32. II (a). The conquerors found the agency of the officers of the Hindu governments useful in more respects than one; by availing themselves of it, they secured the payment of the tribute in money, without materially interfering with the established system of collection, or with the vested rights of proprietors of the soil.

), (b). It is unlikely that any of the foreigners could have been capable of entering into the minutiae of village detail and management; the contracts with the Government for the revenue must necessarily have been made with those natives who had previously superintended extensive jurisdictions, consisting of ten, twenty, or more parishes, leaving them to make their arrangements with the headmen of single villages, a procedure calculated to meet the wishes of the agriculturists at large; for, with the exception of parishes of large extent, in a high state of cultivation, and thickly populated by people of the same class, firmly bound together by the ties of blood and common interest, able and willing to resist oppression or open violence (and of this description there were, and are, many such in the western provinces), it was certainly more advantageous to proprietors of single villages to place themselves under the protection of a powerful contractor, connected with the ruling power, able and willing to support them and their constituents, by acknowledging him as their over-lord, and paying, through him, their quota of taxation, than to enter into engagements direct with Government officers, who would have fewer scruples in extracting money from poor persons, ill able to afford the time necessary to seek justice, than in demanding, or exacting, fees from men whose rank and station in life enabled them to insist upon redress for acts of gross violence and rapacity. These extensive contractors were denominated *talookdars*, or *zemindar talookdars*, and some of them contracted for the revenue of tracts of country comprising two or three hundred villages, or of whole provinces.

118 et seq. III. *Colonel Briggs*.—It has been already shown that each Hindu village had its distinct municipality, and that over a certain number of villages or districts was an hereditary chief and accountant, both possessing great influence and authority, and certain territorial domains or estates. The Mahomedans early saw the policy of not disturbing an institution so complete, and they availed themselves of the local

influence of these officers to reconcile their subjects to their rule. In the long contest of the Hindu Rajahs against the Mahomedans, it seems likely that the former had levied the fourth of the crop from all their subjects, to which by law they were entitled; and it is probable that in their necessities they might even have exacted more. We have no account of the mode the Mahomedans adopted to raise supplies, but we may conclude from what we have seen in later times that, without going into details, they assessed whole districts at a certain sum, and required the *des adikars*, whom they subsequently entitled zemindars, to levy the amount from the respective villages or towns under their charge. From the existence of these local Hindu chiefs, at the end of six centuries, in all territories conquered by the Mahomedans, it is fair to conclude they were cherished and maintained with great attention as the keystone of their civil government. While the administration of the police, and the collection of the revenue, were left in the hands of these local chiefs, every part of the new territory was retained under military occupation by an officer of rank, and a considerable body of Mahomedan soldiers.

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Para. 18.

IV. Mr. Arthur Phillips—

(a).—Hindu custom appears to have held its own against Mahomedan theory, but to have succumbed in a great measure before the rude shocks of Mahomedan practice and the rapacity of conquerors. The machinery for collecting the revenue, indeed, long continued the same. From motives of policy and convenience, such as afterwards influenced the English, the conquerors, as I have said, were content to realize the revenue in the ancient way, and through the established agencies, * * * but eventually the village officers and communities sank before the zemindars.

Tagore Law Lec-
tures, 1871-75

Pages 57 to 61.

18. From this account, and from the whole of this Appendix, it appears that—

I. The system of village communities prevailed throughout India before the Mahomedan rule, and it survived under that rule of seven centuries.

II. This universal system of village communities was based on the joint and several proprietary rights of the original cultivators of the land in a village,—and of their descendants, in the waste lands of their own village, subject to the payment of a Government tax according to rates fixed by custom.

III. The Mahomedan rulers left the village communities intact, utilized the village and district officers, and in only some parts of Hindustan superadded other officers as zemindars; or, rather, allowed the district officers or their immediate supervisors to become, through encroachments, great zemindars.

IV. Apart from this encroachment on the rights of the real proprietors, neither the Hindu nor the Mahomedan

law and constitution favoured the growth of large zemindaries.

V. The Mahomedan law of inheritance, which directs an equal division of real estate among the heirs, favours a disintegration of estates; and though the similar tendency of the Hindu law of division of property among the male issue, or (failing them) the female issue, is qualified by the system of the joint family property, yet the Hindu law, if it thus prevents the disintegration of estates, did also hinder the aggregation in one person of property in several villages, through the difficulties which the village communities interposed against the acquisition of land in a village by strangers from another village. The purchase of a holding in a village, as distinguished from shares in the whole village regarded as one estate, with the consent of the village community, was indeed practicable at all times, but not by such purchases could a large zemindari have been acquired by a proprietor.

VI. The essence of the village system was the proprietary right of the members of the village communities in the lands of their village, a right which included that of allotting waste lands of the village to their sons, or to purchasers, from other villages, of occupancy rights as resident cultivators, subject, in both cases, to the payment of the Government tax. This limited power of appropriating waste lands of the village was the provision, under, virtually, the Oriental Poor Law, for the growth of population, and for employing the increase in the village work-house, that is in the village waste lands, while the provision for receiving strangers from other village communities promoted immigration from overstocked to thinly peopled villages. But this facility for immigration did not promote vagrancy; the sense of peasant proprietorship was strong in the village community, so strong that, though a generation might have passed away since the village was over-run and for a time partially destroyed by conquest, the descendants of the original proprietors would return to the inheritance of their fathers, under the influence of that feeling of peasant, proprietorship which proved a more effectual and salutary law of settlement than England has been able to devise under the Poor Law.

VII. Sir Charles Metcalfe observed that the vitality of the village community was such that nothing could destroy it except the regulations which could easily subvert it. This the Regulations have done in Bengal; the zemindary settlement, with the evils in its train of *hufturn punjum*,

enhancement of rents, the control by zemindars, for more than two generations, of a weak, inefficient, corrupt police, and of corrupt subordinate officials in an insufficient number of courts, also the transfer of village waste lands, or the Poor Law Fund, from the villages to the zemindars, have well-nigh obliterated all trace of proprietary rights such as they existed at the time of the Permanent Settlement. Under the working of the village system and its Poor Law Fund of waste lands, as explained in VI, the allotment of waste lands to new population could not prejudice the rents of the parent proprietors, by raising the *pergunnah* rates of rent; but under the zemindary system, with the waste lands turned into a monopoly in the zemindar's hands, a growth of population and a rise of prices, (brought about "otherwise than by the agency or at the expense of the" *zemindar*,) have created competition rates of rent which enable him, unblushing inconsistency, through Law's to demand from protected ryots (so called) an increase of rent because, forsooth, the value of the produce of the land "has been increased otherwise than by the agency or at the expense of the *ryot*," Lord Cornwallis' misappropriation of the Poor Law Fund to zemindars, and the legislation in Act X of 1859, have enabled the zemindars to make this demand and to throw upon the tax-payers of British India the cost of meeting two of the economic results of those measures, *viz.*, a famine in Orissa, in 1866, when the condition of oppressed ryots was wretched; and another in Behar, where the ryots in the present day are in a deplorable condition, much worse than in any part of Bengal or Orissa.

VIII. Another feature of the native administration through village communities was the maintenance of the administrative staff of districts and sub-divisions, and not unusually the maintenance of the troops, by grants of land which localised the expenditure, causing the greater part of it to be spent or saved within the district. In the present day, the usufruct and the unearned increment of the lands which maintained the Civil administration and the army have passed away from cultivating proprietors to zemindars (mostly non-resident) and money-lenders, and, additional thereto, is an expenditure for a costly administrative machinery of which the largest part, *viz.*, that for European agency, is but partially spent in the district.

APP. II.

MAHOMEDAN
LAW.Administration.
Para. 18.

THE PERMANENT SETTLEMENT AS DESIGNED BY PARLIAMENT.

APP. III. The permanent settlement in the Lower Provinces of Bengal was the actual, though not the logical or necessary, issue of a Resolution of the House of Commons in 1784.

Mr. J. Mill.

2. (I) 1783, *For's India Bill*.—The project of declaring the zemindars and other managers of the land revenue hereditary proprietors of the land, and the tax fixed and invariable (originally started by Mr. Francis, and in part proposed for enactment in the late Bill of Mr. Dundas), was adopted.

Mr. W. Pitt's
speech, 6th July
1784.

(II) 1784, *Pitt's India Bill*.—Another object of investigation, and an object of considerable delicacy, was the pretensions and titles of the landholders to the lands at present in their possession; in the adjustment of this particular, much caution must be adopted, and means found that would answer the ends of substantial justice, without going the length of rigid right; because he was convinced, and every man at all conversant with Indian affairs must be convinced, that indiscriminate restitution would be as bad as indiscriminate confiscation.

Speech of
Sir P. Francis,
16th July 1784.

(III). He spoke of the clause respecting tribute, rents, &c., to be hereafter paid by the landholder, and the plan proposed in clause 57 for the servants abroad to devise the methods of fixing the tribute, rent, &c., of each landholder. He asked, were these sort of enquiries never to end? They might, he said, be determined at home, and the rule might be easily fixed, by taking an average of them for some years past. Any further enquiry to be set on foot now would tend greatly to delay, and to the utter ruin of the people, and would be open to violent and dangerous abuse. * * The next clause, viz., that enacting that the Government abroad should not alter the rents after they had been fixed by the Directors, he highly approved. The clause respecting the pension of the zemindars he reprobated, because he considered the forcing those pensions on the zemindars as a gross oppression.

*The rate of land
assessment in
India should be
permanently
fixed from
downhill
rest, without
enquiry.*

Mr. C. J. Fox,
16th July 1784.

(IV). In regard to the second part of the Bill, consisting of the regulations, I think, and always did, that the zemindars and polygars ought to be restored to their possessions, and that the rents should be fixed and settled by a rule of past periods, and not of future enquiry. Begin fresh enquiries and assessments, and you give authority to the very evils which you profess to remove.

i. ill.

(V). *Pitt's India Bill (passed into an Act on 13th August 1784)*.—The zemindars who had been displaced were to be restored, and their situation, as much as possible, rendered permanent, though nothing was said about their hereditary rights, or a tax incapable of augmentation.

(VI). *Act 24, Geo. III, cap. 25 (2nd Sess., 1784), sec. 39*.—And whereas complaints have prevailed that divers rajahs, zemindars, polygars, talookdars, and other native landholders within the British territories in India have been unjustly deprived of, or compelled to abandon and relinquish, their respective lands, jurisdictions, rights and privileges; or that the tributes, rents, and services required to be by them paid or performed for their respective possessions to the said United Company are become grievous and oppressive; And whereas the principles of justice and the honour of this country require that such complaints should be forthwith enquired into and fully investigated, and, if founded on truth, effectually redressed;—Be it therefore enacted

that the Court of Directors of the said United Company shall, and they are hereby accordingly required, forthwith, to take the said matters into their serious consideration, and to adopt, take, and pursue such methods for enquiry into the causes, foundation, and truth of the said complaints, and for obtaining a full and perfect knowledge of the same, and of all circumstances relating thereto, as the said Court of Directors shall think best adapted for that purpose; and thereupon, according to the circumstances of the respective cases of the said rajahs, zemindars, polygars, talookdars, and other native landholders, to give orders and instructions to the several governments and presidencies in *India*, for effectually redressing, in such manner as shall be consistent with justice and the laws and customs of the country, all injuries and wrongs which the said rajahs, zemindars, polygars, talookdars, and other native landholders may have sustained unjustly in the manner aforesaid, and for settling and establishing, upon principles of moderation and justice, according to the laws and constitution of *India*, the permanent rules by which their respective tributes, rents, and services shall be in future rendered and paid to the said United Company by the said rajahs, zemindars, polygars, talookdars, and other native landholders.

APP. III.

Para. 3.

(VII). The Act, under the authority of which the permanent settlement was made, gave no power to grant waste land. It is the 24th, Geo. III, cap. 25, sec. 39. By this section, the Court of Directors were required to give orders for settling and establishing, "upon principles of moderation and justice, *according to the laws and constitution of India*, the permanent rules by which the tribute, rents, and services of the rajahs, zemindars, polygars, talookdars, and other native landholders should be in future rendered and paid to the united Company." Here there is no authority to give away waste land, or uncultivated land, or indeed land at all; nothing in the most remote sense authorising the giving any *permanent right* to land of any kind. It is "to fix *permanent rules* for the payment of *rents*, tributes, and services due from native landholders," such as rajahs, zemindars, polygars, talookdars, to the Company; affording a presumption, indeed, in direct opposition to the idea of property in the soil existing in any of the classes of persons mentioned. And these "rules for paying rents" were ordered to be fixed "according to the law and constitution of India;" which "debars even the Emperor himself from giving away one inch of waste, or any other land, without an equivalent."

Observations on
the law and
constitution of
India, 1825, page
95.

3. The Court of Directors, in a letter to the Government of Bengal, dated 12th April 1786 (second report from Select Committee, 11th May 1810), stated that "we have entered into an examination of our extensive records on the subject of the revenues of Bengal, from a wish to adopt some permanent system compatible with the nature of our Government, the actual situation of the Company, and the ease of the inhabitants." The despatch, which embodied the results of this examination, constituted the orders of the Court subsidiary to the Resolution in 1784 of the House of Commons. The despatch treats fully of the assessment and collection of the land revenue. The following extracts relate more especially to the Parliamentary legislation of 1784.

I. (a).—In ordering the settlement to be made *in*

APP. III. *instance with the zemindar, we conceive that we adopt the true spirit of the 39th section of the Act of 24th George 3rd. Various objections may be urged against a zemindar, which will absolutely be a deviation from the general rule in their favour, such as incapacity from age, sex, or lunacy, contumacy, or notorious profligacy of character. In such instances, a discreet and reputable relation, by way of guardian or dewan, is to be preferred before any temporary farmer or servant of Government. But we know that there are great difficulties in this matter, and that cases may occur in which the letting of lands to a farmer is the only means of securing the revenues of Government and preserving the inheritance of the zemindar inviolate.*

Para. 3.

(b).—The Committee of Revenue acted perfectly right in stating to you, before they proceeded to the settlement of Bengal year 1192, their queries, entered on your Revenue Consultations of 6th June 1785, and we are satisfied with the construction of the Statute which you gave them for their guidance.

(c).—We apprehend the design of the Legislature was merely to declare general principles for the regulation of our conduct towards the natives, not to introduce any novel system, or to destroy those rules and maxims which prevailed in the well-regulated periods of the Native Princes; an adherence to these must be most satisfactory to the natives, and most conducive to the security of our dominion. In our system, however, there will be this difference and advantage: that every deviation from an established usage or principle is to be made an article of record, with the justification arising from the necessity of the occasion.

Para. 52.

II. It is therefore our intention that the jumma now to be formed shall, as soon as it can have received our approval and satisfaction, be considered as the permanent and unalterable revenue of our territorial possessions in Bengal; so that no discretion may be exercised by our servants abroad in any case, and not even by us, unless in some urgent and peculiar case, of introducing any alteration whatsoever.

III. (a).—The condition of the various descriptions of landholders throughout our provinces has been brought under the consideration of Parliament in a manner that has produced much reproach against the British Government in India; and every plan which has been proposed has been directed to this object as one which called urgently for the interposition of the Legislature, although in the result a considerable degree of latitude is left to us as to the mode of effectuating the redress of those grievances stated to exist:—you will perceive that by the 39th section of the Act passed in the year 1784, we are explicitly commanded forthwith to enquire into the causes, foundation, and truth of the said complaints, and to send orders and instructions to our Governments in India for effectually redressing the same, in such manner as may be consistent with justice and the laws and customs of the country.

(b).—We desire that you will consider this clause of the Act of Parliament with a most minute and scrupulous attention, and take especial care that all the measures adopted by you, in the administration of our revenues, may be consonant to the sense and spirit thereof. We entertain strong hopes on our part, that the instructions we have already given upon a general view of the subject, and founded upon such materials as we now possess, will essentially contribute to carry into effect the humane intentions of the Legislature towards the native land-holders.

Para. 62-7.

IV. (a).—Another essential object of the above recited section is “to settle and establish upon principles of moderation and justice, according to the laws and constitution of India, the permanent rules by which

their tributes, rents, and services shall be in future rendered and paid to the said united Company by the said rajahs, zemindars, polygars, talookdars, and other native landholders." In this point of view we flatter ourselves that the mode we have directed you to pursue, for the purpose of settling the *permanent* revenue for each zemindar, either for perpetuity or a *long term of years*, and giving him the uninterrupted management of his district, will prove extremely satisfactory to the landholders in general, and far more so than any new enquiries into the value and the produce of the lands. At the same time we are desirous of ascertaining, as correctly as the nature of the subject will admit, what were the real jurisdictions, rights, and privileges of zemindars, talookdars, and jaghirdars under the constitution or customs of the Mahomedan or Hindu Government; and what were the tributes, rents, and services which they were bound to render or perform to the sovereign power; and, in like manner, those from the talookdars to their immediate liege lord, the zemindar, and by what rule or standard they were, or ought, severally to be regulated.

APP. III.

Para. 4.

(b).—This object will be best attained by a set of queries drawn out by you, accommodated to local circumstances, and proposed to the most intelligent and experienced natives, Hindu or Mahomedan, either by yourselves or by our servants stationed in different parts of our provinces, or in any other parts of Hindustan, who will transmit the several answers to you, with such further illustrations as they may derive from their own enquiries.

Para. 68.

V. (a).—We have seen the striking want of uniformity which has of late pervaded every part of your revenue system; we have at the same time had under our view the various regulations formed at different periods by our administrations in Bengal, as founded upon the old constitutions of the country, or arising from the necessity of the case, in order to prevent the clashing of authorities, the injury of the revenue, or the inconvenience of the ryots.

Para. 83.

(b).—This inquiry has shown us that almost every individual throughout the country is concerned in the farming or cultivation of land, and consequently implicated in the immediate demands of Government, or those of the zemindars; insomuch that, in numberless instances, justice would be defeated if the magistrate were withheld from the inspection of revenue accounts which, under the prevailing customs and prejudices, could not be obtained but by that authority which superintends the collections and the general administration of the district.

Para. 84.

4. The subsequent discussions in India, and the final orders of the Court of Directors relating to the permanent settlement in Bengal, are noticed in other Appendices. In 1813, the following observations were made in the House of Lords:—

I. LORD GRENVILLE (16th March 1813).—Much important matter for the instruction of the House would be found in a perusal of the progress of events in India from the year 1765 to the year 1784. At the latter period a termination was put to the false, fluctuating policy which had before prevailed, especially in the rate and collection of the land revenue. After long and apparently endless disputes on Indian politics, there was at least one point on which all men then agreed, *viz.*, that it was the duty, not only of the East India Company, but of Government and the Legislature, to fix the rate of re-

APP. III. by which that country was thenceforward to be governed. Contemplating, as he did, with pride and satisfaction the beneficial tendency of that measure, which he had assisted in framing, it was with deep concern and alarm that he perceived by the Fifth Report of the Committee of the House of Commons, that a purpose was entertained of altering, or unsettling, that equitable and salutary measure, the benefits of which had been so conspicuously exemplified in 1786, by the wise and exemplary administration of Lord Cornwallis. Departing from that wise system, the Court of Directors had sent out orders to their servants not to be in a hurry to make the new settlements according to the arrangement of 1784, which had tended so much to the prosperity, glory, honour, and advantage of the subjects in India.

The permanent settlement was designed for the prosperity, glory, honour, and advantage of the subjects in India.

II. MARQUIS OF WELLESLEY (16th March 1813).—With respect to the measure referred to by his noble friend, of making the revenue in India defined and permanent, that, too, was his opinion and his policy; and however he might appear to differ from the Directors at one time, upon that subject, he differed only in requiring due and necessary time. Some delay was absolutely necessary to effect that security and right of property which it was his wish and endeavour to establish. He did establish it before he departed from Fort St. George; and the act was so eminently and solidly beneficial to the country, that he professed himself proud of it, and should be ambitious to have the record of it inscribed upon his tomb.

III. LORD GRENVILLE (16th March 1813).—In explanation, stated that it was not of the delay in taking time to consider this law of settlement being extended to new provinces, but of the expressed reluctance to grant this benefit that he complained. In the Fifth Report of the Committee to which he had referred, he, with regret, perceived this statement; and he must repeat that no system of taxation could be more detestable in any country than a tax upon the abilities and industry of the *husbandman*. This system left to the agents of the Company all the *villainous oppression* of the Mahomedan Government, and *imposts were levied upon the cultivators* of the ground according to their discretion.

... show that a leading member of the Board of Control, who actively promoted the permanent settlement, considered that it would permanently limit the demands upon the ryot or cultivator.

IV. LORD GRENVILLE (21st June 1813).—The revenue of India had been spoken of to ascertain whether it exceeded the expenditure; *but a very important question was to know how it was raised*—whether by taxes that pressed on the people, or afforded a temptation to corruption? Whether a great part did not arise from *a most oppressive and ruinous land tax*? It had been stated, somewhere, that his (Lord Grenville's) opinion was that this tax was not excessive; but this opinion he had never uttered, because he was not ever able to know what the proportion was. This last problem he should be obliged to any one to solve. It had been stated by high authorities that the proportion was excessive, and the system, it was said, was not to be extended to the conquered provinces. The simple question with respect to the zemindary system was, whether you would, or would not, say to the person on whom you laid the tax, you know what the amount shall be. The principle of extending this mode of settled taxation was what actuated the mind of Sir Philip Francis, of Mr. Burke, of Mr. Fox, and of Mr. Pitt; it was adopted by Parliament, and makes a part of the existing law of India. But this period we had acquired other provinces, and yet it did not seem the intention of the Company to extend the principle to them;

it was not the language of the Company, of the ministry, nor, he was sorry to add, of the Parliament itself. The India Company, in one of their reports, seemed to anticipate the greatest advantage from leaving the system unsettled, and levying the taxes according to the increasing wealth of the districts, or even of individuals. APP. II
Para. 5.

V. EARL OF LIVERPOOL agreed with the noble Lord in the propriety of extending a permanent system of regular taxation to all the provinces of India.

5. It appears that—

I. Parliament in 1784 did not prescribe a permanent settlement, but that permanent rules for the payment of rent should be established; nor did Parliament direct that zemindars other than actual proprietors should be declared proprietors of the land, to the exclusion of other proprietary rights; but that the titles of all rajahs, zemindars, polygars, talookdars, *and other native landholders*, should be recognized, if found to be valid.

II. The permanent rules for the payment of rent were to be consistent with justice, and in accordance with the laws, customs, and constitution of India; that is to say, proprietary rights, which that law, custom, and constitution recognized, were not to be destroyed or confiscated, but to be maintained; and the rent for the State was to be fixed in accordance with the share or proportion of quantity, or of amount value of produce which, in accordance with those laws, customs, and the constitution of India used to be taken from the cultivator.

III. The settlement was not to be one of spoliation of rights, but such as should vindicate the principles of justice and the honour of England; should redress wrongs instead of multiplying them, and so should redound to the glory and honour of England, and to the prosperity and advantage of the subjects in India.

IV. The Court of Directors in 1786 ordered that the settlement of the land revenue should, in all practicable cases, be made with the zemindars, and that the settlement, after approval by them, should be permanent only so far that it should not be alterable by the Government of India, in any case, nor even by the Court of Directors, except in some urgent and peculiar case.

V. One, at least, of the authors of the permanent settlement, Lord Grenville, who was a member of the Board of Control, considered that in permanently limiting the rent payable by the zemindar, that payable by the husbandman or cultivator would also be permanently limited.

VI. Another, the most violent advocate of a permanent settlement, Sir Philip Francis, was so self-sufficient, and so

APP. III. ill-informed about the proprietary rights involved, that he
 Para. 6. gravely averred that the settlement for all Bengal might be easily made in England; in the present day the revision of the settlement of but one district is a work of some years, from the necessity of distributing the total assessment among cultivators and recording their rights.

VII. In 1784, the permanent settlement of Bengal appeared to Sir Philip Francis so easy of accomplishment, that it could be arranged from Leadenhall Street:—in the present day the question which most perplexes the Government of Bengal is how to settle the unsatisfactory relations between zemindar and ryot.

VIII. In 1813, Lord Grenville considered that the permanent settlement had greatly redounded to the glory and honour of England, and to the prosperity and advantage of the subjects in India:—In 1873, the Bengal Board of Revenue reported that, under that settlement, the majority of the zemindars were impoverished; the condition of a large proportion of the ryots was bad; and the only class that had signally and chiefly benefitted was that of the money-lenders, who thus crown the pinnacle of England's honour and glory from the permanent zemindary settlement (Appendix XII, para. 14.)

IX. In 1784 the principles of justice and the honour of the country required that charges of the dispossession of landholders should be fully investigated, and, if founded on truth, effectually redressed. The investigation ended in a permanent zemindary settlement, hurriedly passed, which expropriated by the million, and under which the rights of millions of cultivating proprietors have passed away "*sub silentio*."

X. In 1813, Lord Grenville felt constrained "to repeat that no system of taxation could be more detestable in any country than a tax upon the abilities and industry of the *husbandman*. This system left to the agents of the Company all the *villainous oppression* of the Mahomedan Government, and *imposts were levied upon the cultivators* of the ground according to their discretion."—In 1879, the Bengal Government's political economy is much exercised how to settle the question of lop-sided competition rents in a country where towns are few, manufactures scant, land a monopoly, and population dense and so overgrown, that competitive rents have reduced the cultivators in Behar to a state at least not better, apparently worse, than under "the villainous oppression of the Mahomedan Government."

APPENDIX IV.

PERMANENT SETTLEMENT; ITS OBJECTS AND RESULTS.

1. Mr. Philip Francis arrived in India on 19th October 1774. On 22nd January 1776 he put forward his scheme of a permanent settlement for Bengal with a self-sufficiency which has unamiable prominence in his minute. In 1786 he, with others, drafted the instructions respecting a permanent settlement, in the letter from the Court of Directors dated 12th April 1786;—in 1789 and 1790, the Government in India introduced the decennial settlement;—and in March 1793 they declared it a permanent settlement.

APP. IV.
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The permanent settlement was conceived in ignorance, and was carried out with precipitancy.

2. In the North-Western Provinces, a revision of settlement was begun in 1855; it was interrupted by the mutiny and was resumed in 1862; it is not yet finished, though an increase of the land revenue by about half a million sterling as the total result, is expected from the complete revision of a settlement which is to last for only 30 years. Of this amount, the greater part has been gradually realized, only as two or more of the districts have been successively settled. The slowness of the government of the present day to realise an additional revenue of fifty lakhs a year by gradual steps, instead of by a lump re-assessment of the district or of the province, as in the permanent settlement, proceeds from a foolish idea that the amount of the revised assessment should first be distributed individually among the ryots, and their rights be recorded. The enlightened benevolence, the wise philanthropy of 1793 was not fettered by stupid considerations of this kind, which would have interfered with the creation of great zemindars.

An artificial class of proprietors was created with indecent haste.

3.—COURT OF DIRECTORS, 12th April 1786 (*paras. 41 and 42.*)

(1). We apprehend the design of the legislature was merely to declare general principles for the regulation of our conduct towards the natives, not to introduce any novel system, or to destroy those rules and maxims which prevailed in the well-regulated periods of the native princes; an adherence to these must be most satisfactory to the natives and most conducive to the security of our dominions.

Report of Select Committee, 1810, page 160.

APP. IV. (2). In our system, however, there will be this difference and advantage, that every deviation from an established usage or principle is to be made an article of record, with the justification arising from the necessity of the occasion.

4.—AS TO THE PERMANENCY OF A SETTLEMENT.

I.—MILL'S HISTORY OF BRITISH INDIA, (CHAPTER ON THE YEAR 1775).

A permanent settlement, as originally ordered, did not mean that the Government demand should be fixed for ever.

By certainty in matters of taxation is not meant security for ever against increase of taxation. Taxes may be in the highest degree certain, and yet liable to be increased at the will of the legislature. For certainty, it is enough that, under any existing enactment of the legislature, the sum which every man has to pay should depend upon definite cognizable circumstances.

II.—COURT OF DIRECTORS, *12th April 1786, paragraphs 51 and 52.*

Report of Select Committee, 1810, page 161.

(a).—We speak next as to the duration. We are not insensible that the mode of making settlements to continue only from year to year has, in many points of view, been impolitic and prejudicial. For this we impute no blame to our Governor General and Council, as your sentiments on this subject were very wisely and fairly stated to us in the 22nd paragraph of your general letter dated 10th January 1780 ; but as the subject has now undergone so complete an investigation, we trust that a steady system of conduct will now be adhered to, both at home and abroad.

(b). It is therefore our intention that the jumma now to be formed shall, as soon as it can have received our approval and ratification, be considered as the permanent and unalterable revenue of our territorial possessions in Bengal, so that no discretion may be exercised by our servants abroad in any case, and not even by us, unless in some urgent and peculiar case, of introducing any alteration whatsoever.

III.—MR. J. MILL, *23rd August 1831.*

Report, Select Committee.

(a). If I understand the purport of section 39 of the 24th of Geo. 3rd, C. 25, which has just been read, it has nothing to do with the permanent settlement ; it merely ordains that such rights as actually belonged by the law of India to various parties named should be secured to them. Q, 4046.—You do not think it applies to a permanent settlement of the revenue ? Decidedly not.

(b). I think the leases should be of considerable duration ; a few years more or less I consider of no material importance ; but I conceive that the principle of duration of the lease is, that there should be full time during the currency of the lease to derive the full benefit of any ordinary expenditure of capital which the cultivation may require. I think it ought not to be less than 20, and I should not make it more than 30 years as a general rule (Qs. 3911 and 3912).

5. The author of the scheme of a permanent settlement had advocated in 1776 principles but slightly different from those enjoined by the Court of Directors in 1786, as shown

in the following extracts from his Plan of a Permanent Settlement, dated 22nd January 1776:— APP. IV.

a. The jumma once fixed, must be matter of public record. It must be permanent and unalterable; and the people must, if possible, be convinced that it is so. This condition must be fixed to the lands themselves, independent of any consideration of who may be the immediate or future proprietors. If there be any hidden wealth still existing, it will then be brought forth and employed in improving the land, because the proprietor will be satisfied he is labouring for himself (paragraph 48).

Even Sir Philip Francis proposed that ryots should have from zemindars precisely the same permanent settlement as the Government was to give to the zemindars. Para. 6.

b. When the gross sum to be levied from the country is determined, as well for the revenue as all charges incident to it, each zemindary should be assessed its proportion according to the rule in the first article, and let that sum be declared the gross rent of those particular lands in perpetuity. This distribution should be called the tumar jumma, a term sanctified among the natives from the idea of security which they had long been accustomed to annex to it. There is no case of necessity, no emergency whatsoever, which in my opinion should induce Government to increase the jumma (paragraph 53).

c. Temporary distresses may be provided for by temporary contributions which a flourishing country does not feel. If these are once added to the jumma, according to modern practice, they become perpetual, and drive the proprietor, who sees no limit or period to the impositions on his land, to fraud, indolence, or despair.

d. When the zemindar has given a lease of any part of his land to a ryot, the conditions of such lease should be invariably adhered to. In other words, the same security which Government gives to the tenant in chief, should, for the same reason, descend to the under-tenants in their several gradations; so that every rank of society, and every member of it, may have something to call his own. Government should present a form for the pottah, which may be deemed the legal one, and no other be held valid (paragraph 60).

6.—OBJECTS OF THE PERMANENT SETTLEMENT.

I.—COURT OF DIRECTORS, 12th April 1786.

It is entirely our wish that the natives may be encouraged to pursue the occupations of trade and agriculture by the secure enjoyment of the profits of their industry; and that the zemindars and ryots may not be harassed by increasing debts, either public or private, occasioned by the increased demands of Government (paragraph 29).

Report of Select Committee of 1810, page 153.

II.—LETTER FROM GOVERNOR GENERAL TO COURT OF DIRECTORS, 6th March 1793.

a. It is necessary to apprise you (of what you could not have been aware) that all waste lands form a part of the estate of the different landholders, and the boundaries of the portions of these lands that belong to each individual are as well defined as the limits of the culti-

Ibid, page 101.

APP. IV.

Para. 6, contd.

vated parts of their property, and that they are tenacious of their right of possession in the former as the latter.

b. The waste lands may in general be comprehended under two descriptions: first, those in the level country, which are interspersed in more or less extensive tracts amongst the cultivated lands; and secondly, the Sunderbuns (the country along the sea-shore between the Hooghly and Megna rivers) and the foot of the vast range of mountains which nearly encircle your Bengal provinces (paragraph 14).

c. The first mentioned description of waste grounds will be easily brought into cultivation when the zemindars have funds for that purpose, and provided they are certain of reaping the profit arising from the improvement. These lands, however, are not wholly unproductive to them at present; they furnish pasture for the great herd of cattle that are necessary for the plough, and also to supply the inhabitants with ghee (a species of butter) and milk, two of the principal necessities of life in this country (paragraph 15).

d. It is true that the lands (*c*) in this desolate state far exceed what would suffice for the above purposes, but it is the expectation of bringing them into cultivation, and reaping the profit of them, that has induced many to agree to the decennial jumma which has been assessed upon these lands. It is this additional resource alone which can place the landholders in a state of affluence, and enable them to guard against inundation or drought, the two calamities to which this country must ever be liable, until the landholders are enabled to provide against them (as we are of opinion they in a great measure might) by the above-mentioned and other works of art. To stipulate with them, therefore, for any part of the produce of their waste lands would not only diminish the excitement to these great and essential improvements in the agriculture of the country, but deprive them of the means of effecting it (paragraph 15).

e. With respect to the second description of waste lands (the lower parts of the Sunderbuns perhaps excepted), they also include the estates of individuals with whom the settlement is made; but supposing these lands to be at the disposal of Government, as they have for the most part been covered with forest or underwood from time immemorial, and as the soil is in itself, compared with that of the open country, unproductive, * * we are of opinion that any attention to them would be premature for a long period of years to come (paragraph 16).

III.—LORD CORNWALLIS, *18th September 1789.*Fifth Report,
page 472.

Page 473.

a. A permanent settlement, *alone*, in my judgment, can make the country flourish, and secure happiness to the body of the inhabitants.

b. Where the landlord has a permanent property in the soil, it will be worth his while to encourage his tenants, who hold his farm in lease, to improve that property; at any rate he will make such an agreement with them as will prevent their destroying it.

Ibid.

c. I may safely assert that one-third of the Company's territory in Hindostan is now a jungle, inhabited only by wild beasts; without a permanent settlement, the zemindars will not be incited to clear

away that jungle and bring it into cultivation, and effect other substantial improvements.

d. With a permanent settlement, the zemindars will do all such acts as are calculated to promote the improvement of the country, such as assisting ryots with money, refraining from exactions, foregoing small temporary advantages for future permanent profits, such as must ultimately redound to the benefit of the zemindars, and ought to be performed by them.

APP. IV.
The authorities joined in crying for the moon.

Para. 6, contd.
Ibid., page 474.

e. It is for the interest of the State that the landed property should fall into the hands of the most frugal and thrifty class of people, who will improve their lands and protect the ryots, and thereby promote the general prosperity of the country.

f. It is immaterial to Government what individual possesses the land, provided he cultivates it, protects the ryots, and pays the public revenue.

g. Although, however, I am not only of opinion that the zemindars have the best right, but from being persuaded that nothing could be so ruinous to the public interest *as that the land should be retained as the property of Government*, I am also convinced that, failing the claim of right of the zemindars, it would be necessary for the public good to grant a right of property in the soil to them, or to persons of other descriptions. I think it unnecessary to enter upon any description of the grounds upon which their right appears to be founded. The recognition of the right is the most effectual mode for promoting the general improvement of the country, which I look upon as the important object for our present consideration.

This last ought Lord Cornwallis not to have done, but his Lordship did it; and the zemindars left the others undone. Failing the zemindar's right, Lord Cornwallis saw no proprietary right except that of the Government, who, as shown in Appendix V, were not the proprietors of the soil. There is, indeed, another, and evidently the proper, though not the received view, which diverts Lord Cornwallis's benevolence of heartlessness, *viz.*, that his Lordship contemplated a permanent assessment or fixed rent from the ryot to the zemindar of exactly the same character as the permanent settlement with the zemindar. In this view his Lordship's indifference about the question of proprietary right becomes, at least, intelligible.

IV.—SIR J. SHORE.

a. The surest way to retain our dominion in Bengal is by establishing a system of government calculated to promote the happiness of our subjects, by affording them security in their property, relief from oppression, and a reasonable indulgence to their prejudices.¹

¹ A sense of their proprietary rights was a very strong motive to cultivation in the khodkbast ryots.

APP. IV.

—
All the authorities joined in crying for the moon.

—
Para. 6, contd.

Paras. 268 and 270.

Para. 531.

b. In restoring and confirming the confidence of our subjects, we assume one solid principle of reform, a principle without which no system can be successful. It now remains to trace the several considerations connected with the principle; to form the best possible regulations consistent with it for guarding against the evils arising from the incapacity of the zemindars, for the security of the ryots, and for preventing oppression on the ryots by the farmers and zemindars.

c. With respect to ryots, however, their security requires that the settlement made with them should become matter of record. In every zemindary, *where the established laws of collections have not been infringed*, this is the case at present. But we know also, that the zemindars continually impose new cesses upon their ryots, *and having subverted the fundamental rules of collection*, measure their exactions by the abilities of the ryots. This is a very serious evil; for, exclusive of the injury which the unprotected subjects of Government sustain from it, a necessity follows *of our interference to regulate the assessment upon them* * * Some time will now be required to convince the zemindars that we are serious; * * to eradicate those habits and impressions which have been continued through life, is scarcely to be expected during the present generation * * In relying, therefore, on the example of good faith which the Government gives to the zemindars, we ought not, while the example is taking effect, to abandon the ryots to caprice or injustice, the result of ignorance and inability. With knowledge, or the means of obtaining it, we may correct the consequences of both. And at present, we must give every possible security to the ryots as well as, or not merely, to the zemindars. This is so essential a point that it ought not to be conceded to any plan.

1789, d. But if this were the place for discussing the perpetuity of the assessment, I should suggest another question, whether we ought not to have some experience, that the regulations which we mean to establish are found in practice sufficient to correct the various abuses existing in the detail of the collections? If these regulations are generally necessary, as I suppose them to be, it is very evident that they must be enforced before we can expect improvement from the labours of the ryots for whose ease and security they are principally calculated.

The foregoing extract shows that ryots were not to become tenants-at-will under the zemindary settlement. Every possible security against the exactions of zemindars was to be provided.

V.—LORD CORNWALLIS, 3rd February 1790.

Page 192.

In case of a foreign invasion, it is a matter of the last importance, considering the means by which we keep possession of the country, that the proprietors¹ of the lands should be attached to us from motives of self-interest. A landholder, who is secured in the quiet enjoyment of a profitable estate, can have no motive for wishing for a change. On the contrary, if the rents of his lands are raised in proportion to their improvement, if he is liable to be dispossessed should he refuse to pay the increase required of him, or if threatened with imprisonment

¹ Read "cultivating proprietors."

or confiscation of his property, on account of balance due to Government,¹ upon an assessment which his lands were unequal to pay, he will readily listen to any offers which are likely to bring about a change that cannot place him in a worse situation, but which holds out to him hopes of a better. * * There is nothing new in this plan, except the great advantages which are given to the zemindars, ta'ookdars, and ryots.

APP. IV.

All the authorities joined in crying for the moon.

Para. 7.

VI.—COURT OF DIRECTORS, *1st February 1811.*

The objects of that settlement were to confer upon the different orders of the community a security of property which they never before enjoyed; to protect the landholders from arbitrary and oppressive demands on the part of Government; to relieve the proprietors of small estates from the tyranny of the powerful zemindars; and to free the whole body of merchants and manufacturers, and all the lower orders of the people, from the heavy impositions to which they have long been subjected (paragraph 27).

Revenue Selections, Vol. I, page 3.

VII.—MR. SISSON'S REPORT, *2nd April 1815.*

The expected result of the decennial settlement was that "individuals would thereby be certain to enjoy the fruits of their industry; that it would dispense prosperity and happiness to the great body of the people, and increase the power of the State, which must be proportionate to the collective wealth that, by good government, it might enable its subjects to acquire.

Revenue Selections, Vol. I, page 385.

7.—MISTAKES IN THE PERMANENT SETTLEMENT.

I.—MILL'S HISTORY OF BRITISH INDIA.

Without much concern about the production of proof, Mr. Francis assumed as a basis, two things: first, that the opinion was erroneous, which ascribed to the sovereign the property of the land; and secondly, that the property in question belonged to the zemindars. * * It is only necessary to state that Mr. Francis proposed to protect the ryots from the arbitrary exactions of zemindars by prescribed forms of leases, in India known by the name of pottahs. (Vol. 4, 1775, page 6.)

II.—LORD CORNWALLIS, *3rd February 1790 (replying to Sir J. Shore's objection that there was great uncertainty about ryots' rights, and ignorance on the part of the ryot himself of what he should pay):—*

Fifth Report, page 486.

(a). If the officers of Government possessing local control are imperfectly acquainted with the rules by which the rents are demanded from the ryots, and their superiors, farther removed from the detail, have still less information about them, at what period are we to hope that Government and its officers will obtain a more perfect knowledge of them? The collectors have now been three years acting

¹ For "Government" read "zemindar."

APP. IV.

Nothing is known about ryots, but everything will come right with a permanent settlement.

Para. 7, contd.

under positive instructions to obtain a more perfect knowledge of them * * It is to be supposed that they have communicated all the information which they possessed; and no further lights are, therefore, to be expected from them. * * Shall we calmly sit down discouraged by the difficulties which are supposed to exist, and leave the revenue affairs of this country in the singular state of confusion in which they are stated to be by Mr. Shore?

(b). In order to simplify the demand of the landholder upon the ryots, or cultivators of the soil, we must begin with fixing the demand of Government upon the former; this done, I have little doubt¹ but that the landholders will, without difficulty, be made to grant pottahs to the ryots upon the principles proposed by Mr. Shore for the Bengal settlement. The value of the produce of the land is well known to the proprietor or his officers, and to the ryot who cultivates it; and is a standard which can always be reverted to by both parties for fixing equitable rates.

Ibid,
page 490.

(c). I must declare that I am clearly of opinion that this Government will never be better qualified, at any given period whatever, to make an equivalent* settlement of the land revenue of these provinces; and that if the want of further information was to be admitted now, or at any future period, as a ground for delaying the declaration of the permanency of the assessment, the commencement of the happiness of the people and of the prosperity of the country would be delayed for ever.

(d). The question that has been so much agitated in this country, whether the zemindars and talookdars are the actual proprietors² of the soil, or only officers of Government, has always appeared to me to be very uninteresting to them; whilst their claim to a certain percentage upon the rents of their lands has been admitted, and the right of Government to fix the amount of those rents at its own discretion has never been denied or disputed.

III.—SELECT COMMITTEE of 1812.

Your Committee have been induced to mention these and other circumstances of a similar nature from an impression that in settling the revenue, and introducing new regulations of a permanent nature, into the new acquisitions of territory under the different presidencies, in which important service the India Government is now actually employed, the operation of the new system, introduced into Bengal, should be kept constantly in view, in order that any errors³ which may have been committed through inadvertency or precipitancy, or want of experience in those possessions, may be avoided on future occasions.

¹ Two paragraphs previously His Lordship had observed: "We have found that the numerous prohibitory orders against the levying of new taxes, accompanied with threats of fine and punishment for the disobedience of them, have proved ineffectual; and indeed how could it be expected that whilst the Government were increasing their demands upon the zemindars, that they, in turn, would not oppress the ryots."

² Lord Cornwallis contemplated the alternative, that if the zemindars were not the proprietors, then the Government was the proprietor. The possibility of the ryot being proprietor did not occur to His Lordship.

³ Errors by which the property of millions of proprietors was confiscated.

IV.—COURT OF DIRECTORS, *6th January 1815.*

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If mistakes occurred (and great mistakes unquestionably did) in forming the permanent settlement of Bengal, the proper inference is not that they are wholly unavoidable in great transactions of a similar character, but that the utmost care and caution ought to be used to prevent their recurrence. * * It is important also not to lose sight of the causes from which those mistakes arose; and we are warranted, not only by general probability, but by the recorded confession of some of our revenue servants at the time, in imputing the errors in question to the want of information by the collectors, who were positively prohibited from resorting to minute local scrutinies for the purpose of ascertaining the resources of the country. * * In the state of darkness and uncertainty above described, it is not surprising that errors were committed in the formation of the settlement (paragraphs 34 and 35).

Confession of error by which the proprietary rights of millions were destroyed.

Para. 7, contd.

Revenue Selections, Vol. I, page 281.

V.—SIR E. COLEBROOKE, *12th July 1820.*

The errors of the permanent settlement in Bengal were two-fold: *first*, in the sacrifice of what may be denominated the yeomanry, by merging all village rights, whether of property or occupancy, in the all-devouring recognition of the zemindar's paramount property in the soil; and, *secondly*, in the sacrifice of the peasantry by one sweeping enactment, which left the zemindar to make his settlement with them on such terms as he might choose to require. Government, indeed, reserved to itself the power of legislating in favour of the tenants; but no such legislation has ever taken place; and, on the contrary, every subsequent enactment has been founded on the declared object of strengthening the zemindar's hands.

Revenue Selections, Vol. III, page 167.

VI.—MR. HOLT MACKENZIE, *2nd January 1822.*

(a). Subsequently to the perpetual settlement (11th February 1793), Lord Cornwallis, in the minute in which he brought forward his great scheme for regulating the judicial and revenue establishments of the provinces, proposed the abolition of the office of amildar. The grounds on which the measure is recommended it would be superfluous to notice here, excepting in so far as it is instructive to observe how much the distinguished person with whom it originated was misled in regard to the facts on which his reasoning is founded (paragraph 53).

Revenue Selections, Vol. II, p. 53.

(b). It seems now scarcely credible that Lord Cornwallis should have been led to believe that all the needful particulars regarding the relative claims of Government and of individuals had been recorded; and still less that "the rights of the landholders and cultivators of the soil, whether founded upon ancient custom or on regulations, which have originated with the British Government, had been reduced to nothing." The contents of such declarations, made by so eminent a person, may have led to the cautious and even suspicious examination of any general statements in regard to the present state of things (paragraph 54).

APP. IV. VII.—LAW AND CONSTITUTION OF INDIA.

ERRORS IN THE
PERMANENT
SETTLEMENT.

Para. 7, contd.

The author of that work, after quoting the statement in the proclamation of 22nd March 1793, that the permanent settlement was made with the actual proprietors of the soil, observed as follows:—

Page 136.

(a). It would, therefore, appear, were we to attend to this alone, that the local Government intended to admit to the settlement only the "actual proprietors of the soil," excluding such possessors of land as by their own act were *known not to be actual proprietors*, as talookdars holding by special deeds, or holders under crown grants, or persons incapacitated by their sex, or by the hand of God, from entering into such settlement.

Page 137.

(b). Why this intention was departed from it is not easy to imagine. Necessity alone could warrant a proceeding so arbitrary; and it so happened that not only no such necessity existed, but that the ablest by far, as well as the best-informed member of the Bengal Government at the time, Mr. Shore, the present Lord Teignmouth, strenuously opposed the precipitancy with which the permanent settlement was urged to a conclusion. * *

Ibid,
page 137.

(c). Lord Cornwallis was an amiable and a virtuous man, and in carrying into effect the permanent settlement no doubt thought that he was conferring a great blessing upon India. But it was one of those short-sighted benevolent-like acts which men with good hearts sometimes rush upon without seeing, in all its bearings, what they are about; and while they effect a partial good, they entail an enormous general evil. Lord Cornwallis and his concurring colleagues at home and abroad of that day have the pre-eminent satisfaction of knowing that, by their celebrated proclamation of 1793, they deprived the whole population of the three finest provinces of India of their hereditary and hitherto undoubted right of property in the soil, the land of their fathers, the only thing which the anarchy of their country had ever suffered them to recognise as property, and vested this sacred right, *not* in the honourable, the benevolent, and the humane breasts of the English Government, but they transferred the real owners of the soil, like a herd of the inferior creation, into the hands of what we call the zemindars, a set of men proverbial throughout the country for their tyranny, profligacy, and incapacity. This was the blessing for which India was expected to return thanks to those who were instrumental in bestowing it.

VIII.—MR. A. D. CAMPBELL.

Sess. 1831-32,
Vol XI,
page 30.

Any attempt, however, to adjust satisfactorily the payments of the cultivators must necessarily fail, without a thorough reform of the office of village accountant. It has been one of the greatest errors of the permanent settlement to allow this useful office to fall into disuse, or, where it exists, to place the holders of it entirely under the zemindars. The object of the original institution of the office of putwari or curnum was, that, after the rates payable by the cultivators had been adjusted, they should register them as recorders of the Government, nominated for

the mutual guidance as much of the hereditary payers as of the hereditary receivers of the land revenue; nor could any measure have been more inexpedient than the transfer of this most useful check against the exactions of the more powerful from the more helpless classes of the community from the protecting hands of the ruling power itself to the exclusive charge of the zemindars; for they thus obtained the complete surrender of the great check against their own rapacity.

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 ERRORS IN THE
 PERMANENT
 SETTLEMENT.

Para. 8.

IX. (a).—It had been proposed by Lord Teignmouth in Bengal to fix the maximum rates of the public revenue payable by the cultivators to the zemindar at those actually assessed when the permanent settlement was introduced, which, though confirming existing illegal cesses, would at any rate have placed a bar against further abuse, and given a precise limitation to the Government demand.

Ibid,
 page 20.

(b).—The local or pergunnah rates left undefined were, however, preferred in Bengal; and the result has been already stated. But at Madras the suggestion was strictly adopted; and the maximum rate payable by the cultivator to the zemindar on all land was limited to the actual rates levied on the cultivated land in the single particular year which preceded the limitation of the zemindar's own jumma to Government. The accounts invariably kept by the village accountants under the Madras Presidency afford a record of these rates not procurable in Bengal. It is only where these rates are not ascertainable that reference is to be had to the rates established for lands of the same description and quality as those respecting which the dispute may arise. The consequence has been that the cultivators under the Madras Government have looked to this limitation as a great security for their rights.

8.—ILLUSIONS OR VAIN EXPECTATIONS OF THE FRAMERS OF THE PERMANENT SETTLEMENT.

I. In the *Ayeen Akbari* it was directed that the amulguzzur, or collector of the revenues, "shall annually assist the husbandman with loans of money, and receive payment at distant and convenient periods," necessarily without interest, the taking of interest being absolutely prohibited by the Mahomedan law. Lord Cornwallis stated a like expectation, that the zemindar, under a permanent settlement, will "assist the ryots with money" (paragraph 5, section III*d*).

(a). COLEBROOKE'S SUPPLEMENT, page 182: *Proceedings, 16th August 1769*—

An advance in money is made by the zemindar to the cultivator, by the help of which he tills and improves the land. When the crops are cut and gathered in, they are generally divided between the cultivator and the zemindar; from one-third to one-half to the cultivator, and the remainder to the zemindar, when the former accounts to the latter for the amount of the advances, which are often taxed by the zemindar with a heavy interest.

APP. IV. (b) MR. H. NEWNHAM, *7th May 1832.*

ILLUSIONS OF
THE DREAMS OF
THE PERMANENT
SETTLEMENT.

Sess., 1831-32,
Vol. XI,
Q. 2737.

Para, 8, contd.

Many persons advocate the zemindary cause by alleging outlay of capital, but it is seldom more than a current loan, repayable at very high interest, or, which is worse, the repayment in commodities at a very much lower price than the market price; but as for any permanent outlay of capital in digging wells and making tanks, I fear that there are very few instances of the zemindars laying out capital in that way: the great improvements in the country take place from the junction of the ryots in different labours; at least I have seen them making bunds across rivers, sinking wells, making water-courses from tanks, or collections of water, and undertaking many important works of that kind.

(c) BOARD OF COMMISSIONERS IN BEHAR AND BENARES, *8th March 1822.*

Revenue
Selections,
Vol. III,
page 364.

We cannot also acquiesce in the assertion of capital, or the gains of the sudder malguzar, being laid out in agricultural improvements. It is the labour and industry of the ryots, frequently in opposition to the sudder malguzar, which has brought the country into its present state of cultivation. Wells are dug in most soils by the labour, and oftentimes by the money of the cultivator. In tracts of country where wells require cylinders of masonry or wood, the zemindars do not increase the fertility by any outlay. It is in these spots that the present Government, like all preceding Governments, should interpose with the public purse. We doubt whether a single well entailing a considerable outlay will be found to have been dug and constructed by the zemindars under the British Government, with a clear and unbiassed wish to fulfil towards it the functions of their stations. We have seen the shafts of masonry of former Governments remaining incomplete; and we venture to say that the only wells of this kind which the zemindars have constructed are merely designed to increase the produce of the private farms (*arazecat zeer*), for which they pay nothing to Government. The advance of tuecavi can scarcely be called the employment of capital by the sudder malguzar; it is, more strictly, the employment of capital by the ryots, for it is a mere banker's loan on high interest, without risk, as the ryots' crop, the security, remains within the power of the lender. If the ryots' profits were secured by laws, the loan could be more advantageously borrowed from the village banker.

II.—It was expected that the zemindar, having the advantage of all the revenue from bringing waste lands into cultivation, would conform to the law which prohibited him from increasing the ryot's rent. Thus—

MR. SISSON'S REPORT, *2nd April 1815.*

venue Selec-
ns, Vol. I,
3c 355.

The permanent settlement differed from the settlements which preceded it in but three points: first, in its being fixed for ever; secondly, in its formally vesting the property of the soil, under certain restrictions, in the zemindar, till then a mere ministerial officer under Government; and lastly, in its giving up to the zemindar the whole of the profit which was certain to accrue from a progressive extension of cultivation, for generations to come. The additional profits which were

to accrue to the zemindar from the permanent settlement of his estate were confined to but one source, *i.e.*, extension of cultivation. He was vested with no power to enhance the rents of his tenants;—with reference even to the waste lands which his exertions might bring into cultivation, he was peremptorily restricted from exacting a higher rent than that which lands of a similar quality might be rated at in the nirkbundi of his estate. The profit that was to arise to him from bringing the waste lands into cultivation was the enjoyment of the Government's share of their produce in addition to his own.

APP. IV.

ILLUSIONS OF
THE FRAMERS OF
THE PERMANENT
SETTLEMENT.

Para. 8, contd.

Huftum and Punjum, the strained relations between zemindar and ryot, and the multitudinous suits for enhancement of rent, long since dispelled the foregoing illusion. Thus—

a.—MR. C. B. TREVOR, *13th April 1850.*

The relations between landlord and tenant should be in these Provinces founded on mutual interest, and the good-will which such a bond creates is, when realised, one of the surest marks of social happiness, if not of social progress. Indubitably, in this country, we do not see the full advantage of the system of non-interference;—circumstances, which it is needless here to detail, have tended to throw the responsible duties attaching to landholders upon persons unworthy of exercising or incapable of appreciating them; and the result has been, that the most important class of the community, the ryots, have come to look upon the zemindars simply as unreasonable demanders of rent, and aiders and abettors in all sorts of tyrannical practices; no Government can expect immediate results from any act of its own; time, however, and education will, probably, at last produce a race of zemindars keenly alive to their own rights and interests, and equally so to those of others, and at the same time fully sensible of the duties which their station as landholders entails upon them.

b.—MR. WELBY JACKSON, *July 1840.*

In the present state of the country, I look on the zemindars as the opponents of the cultivators, not the protectors, of their interests; the zemindars are continually trying to shake the permanency of the old resident ryots' tenure, the only permanent interest in the land now existing (besides that of the Government), while the ryots are endeavouring to retain it; the Government is bound to protect them, and interested too; for rack-renting, the general practice of the zemindars, where they can have recourse to it, is far from conducive to the improvement of the land.

c.—EDITOR OF THE "HINDOO PATRIOT" (BABOO HURRISCHUNDER MOOKERJEA),

BABOO SUMBHOONATH PUNDIT, AND OTHERS, *27th September 1851.*

(1). There is an almost universal absence of good feeling between landlord and tenant in this country, which leads to unceasing endeavours

APP. IV. on the part of the one to injure the other to the utmost of his power. This power is obviously greater on the side of the landlord.

ILLUSIONS OF
THE FRAMERS OF
THE PERMANENT
SETTLEMENT.

Para. 8, contd.

(2). The new sale law (Act I of 1845) grants to landlords the power of enhancing without limit the rents of all tenures except the khoodkasht and some others of a rare description, situated in estates purchased at a sale for arrears of revenue due upon them. The removal of a khoodkasht tenant is therefore a very great advantage to the landlord whenever the holding, as it often must be, is more highly bid for by a new-comer

(3). The resumption laws in favour of zemindars have gradually placed under their power a class of men who, bred up in independent habits and amidst the associations of good birth, are generally personally obnoxious to an oppressive landlord. The removal of these *quondam* freeholders is an object of general desire among landlords

d.—REV. A. DUFF AND 20 OTHER MISSIONARIES, *April 1857.*

The zemindars have not fulfilled the just expectations of the State, or the conditions connected with the permanent settlement. Far from accelerating the progress of the country either in civilisation or material prosperity, the zemindars have generally checked the accumulation of capital by their tenants. They have not stimulated exertion by their own example, nor encouraged confidence by generosity and kindness. On the contrary, by arbitrary exactions they have repressed the industry of their tenants, and by the exercise of their excessive powers under Regulation VII of 1799 they have destroyed every vestige of their independence. * * The oppressions of all grades of superiors, both middlemen and zemindars, have been practised, and are still practised with lamentable effect, partly with legal sanction, and partly without it, but entirely, in nearly every case, without the slightest hope on the part of the tenant of legal redress.

e.—SIR H. RICKETTS, *10th May 1850.*

The consequence is, that on a sale taking place, affrays and litigation cannot but ensue. There must always in every case be years of enmity between the new landlord and his tenantry. There being no record of the protected, he assumes that none are protected, while the tenants set up groundless claims to protection, oftentimes supported by the late zemindar. * * I can imagine no condition more pitiable than that of the inhabitants of a zemindary transferred by sale for arrears. Though the purchaser may be a man of good character, his agent may be a tyrant. All the tenures of all classes are open to revision; each inhabitant can see before him only the feeling of peadas and ameens, "salamee" to the new owner, weary journeying to the sudder station, and at last readjustment of his rent. "Readjustment of his rent;" we can talk of it and write of it with indifference, but to the tenants of an estate a sale is as the spring of a wild beast into the fold, the bursting of a shell in the square. It is the disturbance of all they had supposed stable. The consequence must be a recasting of their lot in life, with the odds greatly against them.

f.—SIR F. HALLIDAY, *2nd September 1856.*

The *intention* of the permanent settlement was to recognise and confirm existing rights in the land, and to prevent encroachment on those rights for the future. The *effect* of the settlement was, however, to erect into landowners men who were mere tax-collectors, and to give them almost unlimited power over all the old village proprietors, thus exposing to hazard a vast mass of long existing rights and creating new and unknown rights of property where they had never been before. The consequences of this have been deeply injurious to the great body of real proprietors whose rights were sacrificed on the occasion; and the bad consequences of the measure may be traced at the present day in many of the evils which penetrate into and vitiate so much of the constitution of our rural societies. The only chance of breaking any part of this system down (and every breach of it is a blessing to thousands) is through the purchase of zemindaries by Government at auction sales * * Every zemindary so purchased is a population redeemed and regenerated.

APP. IV.

ILLUSTRATIONS OF
THE FRAMERS OF
THE PERMANENT
SETTLEMENT.

Para. 8, contd.

(g).—SIR J. P. GRANT, *10th February 1840.*

The right to enhance according to the present value of the land differs not in principle from absolute annulment of the tenure.

III.—The rent to zemindars from bringing waste lands into cultivation (one-third of culturable land in Bengal was uncultivated at the time of the permanent settlement) and the prosperity of the ryots under fixed rents, were the State provision for famine. The famine in Behar in 1874-75 cost six and a half millions sterling; interest on that sum, at $4\frac{1}{2}$ per cent., *viz.*, £292,500, deducted from the land revenue of Behar (£970,409) leaves £677,909, or little more than the land revenue of that province in 1790-91, *viz.*, £530,918, though considerable additions were made to the land revenue of Behar, after the permanent settlement, in respect of lands not included in the settlement with the zemindars. A zemindary in Behar sells for 25 or 30 years' purchase, one in Eastern Bengal for about ten or twelve years' purchase, its value being enhanced to the zemindar in Behar partly by the more valuable produce of the province, but also by the oppression of the ryots, and their absolute subjection to the will of the zemindar.

IV.—Inland transit duties, and increased revenue from sea customs, were to compensate the State for the surrender of increase of land revenue;—thus:—

(a).—LORD CORNWALLIS, *1st February 1790.*

In course of time, as commerce and wealth increase, such regulations Fifth Report may be made in the time of the internal trade, and the foreign trade 181-2 imports and exports, as will afford a large addition to the income of

APP. IV. the public, whenever its necessity may require it, without discouraging trade or manufactures, or imposing any additional rent on the lands.

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SETTLEMENT.

Para. 8, contd.

Report, Select
Committee, 1810,
page 103.

(b).—LETTER TO COURT OF DIRECTORS, 6TH MARCH 1793, REPORTING THE PERMANENT SETTLEMENT.

If at any future period the public exigencies should require an addition to your resources, you must look for this addition in the increase of the general wealth and commerce of the country, and not in the augmentation of the tax upon the land. Although agriculture and commerce promote each other, yet in this country, more than in any other, agriculture must flourish before its commerce can become extensive. The materials for all the most valuable manufactures are the produce of its own lands. It follows, therefore, that the extent of its commerce must depend upon the encouragement given to agriculture, and that whatever tends to impede the latter, destroys the two great sources of its wealth. At present, almost the whole of your revenue is raised upon the land, and any attempt to participate with the landholders in the produce of the waste lands would (as we have said) operate to discourage their being brought into cultivation, and consequently prevent the augmentation of articles for manufacture or export. The increase of cultivation (which nothing but permitting the landholders to reap the benefit of it can effect) will be productive of the opposite consequences. To what extent the trade and manufactures of this country may increase, under the very liberal measures which have been adopted for enabling British subjects to convey their goods to Europe at a moderate freight, we can form no conjecture. We are satisfied, however, that it will far exceed general expectation, and the duties on the export and import trade (exclusive of any internal duties which it may in future be thought advisable to impose) that may hereafter be levied, will afford an ample increase to your resources, and without burdening the people, or affecting in any shape the industry of the country.

The inland transit duties were to supplement the permanent land revenue: but with the same precipitancy, characteristic of a rash benevolence, with which the permanent settlement had been pushed forward, because detailed enquiries would have been troublesome, the sayer duties were abolished (as "the shortest way of getting rid of the embarrassment which the resolution for the resumption of sayer had occasioned"), only to be revived, however, after a brief interval, in 1810, as transit duties, until they were finally abolished in 1836. Under sea customs, export duties, excepting, perhaps, the duty on rice, are doomed; and the prospect of free custom houses in a not remote future has been entertained.

V.—It was expected that the zemindars, with a fixed land tax (and, it might be added, with the acquisition of a new

proprietary right in the properties of millions) would lay out capital in improving agriculture. The testimony recorded is, that the zemindars have done little or nothing, the ryots everything, for the extension and improvement of cultivation.

(a). SEE SECTION I.

(b). COURT OF DIRECTORS, *9th May 1831.*

(1). The second proposition of the Commissioners, that to fix the rates of the ryots would be exceedingly mischievous, is founded on the assumption that to give the ryots more than the bare and miserable subsistence allowed them by the zemindars, would not make them more happy, but as they are indolent and improvident, would only render them less productive: and that, happily for the country, the profit left by the permanent assessment on the land "had not exclusively centred with the ryot, which it must chiefly have done had the original intentions of its author been enforced." It is assumed that the zemindar, on the other hand, is a man of a very provident disposition, and "by allowing him," they say, "to derive a fair profit by enhanced rents, a strong excitement would be given to the extension of the cultivation. Capital would be employed in the mode most conducive to augment the wealth of the country, while the advantages attendant on industry would be more generally promoted; new channels of abundance and riches would be opened, &c." All this magnificent promise, you may observe, is founded on the two suppositions; that the zemindars in India are a provident, productive class, and that the ryots are the reverse. And on no better foundation than this do Messrs. Locke and Waring place the conclusion that all the prescriptive rights of the ryots ought to be annulled. We desire to record our satisfaction at the following part of your reply: "The Vice-President in Council is little disposed to believe that any rules will be required to guard against the extension of too great advantages to the ryots; still less can he for a moment admit the position that the native of India, by a strange perversity of nature, requires the stimulus of misery to goad him to exertion, and that he must for ever remain insensible to the losses, however great and manifest, which industry holds out to him. The influence of such an opinion must extend far beyond the question now under discussion, and would, in fact, destroy all hopes of the moral improvement of the people. It appears, however, to the Vice-President in Council altogether at variance with the acknowledged principles of human nature. In point of fact, too, the experience of the last few years, on the contrary, it may be much more justly said that the characteristic indolence and imprudence of the Indian peasantry are the necessary results of the circumstances of their situation; and it would be unreasonable to expect the efforts of industry, or the means of improvement, from persons who cannot but feel that the laws are insufficient to protect them in the enjoyment of fruits of the one, and that there is no chance of their the more distant advantages of the other (Paragraph 55)."

(2). You had, indeed, express and deliberate intention to send it off with you to appeal. There is scarcely any fact to which this is more

See. 1331-32,
Vol. XI, pages
102-3.

APP. IV. frequent testimony in your records than the improvidence and prodigality which characterise the zemindars. On the subject of their inattention to the improvement of their estates, the following declaration of Mr. Ernst, in his answer to the questions which were circulated in 1801, may serve as a specimen of the body of evidence which fills your records: "I have never seen or heard of a zemindar in Bengal who took any measures for the improvement of his estate on a large and liberal scale. Landholders do not carry their views beyond granting waste lands on the terms which are customary in the pergunnah; they hardly ever encourage cultivation by digging a tank or making advances to the ryots" (*paragraph 56*).

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Para. 8, V, contd.

(3). The words of the Board of Revenue are these, and we cannot but observe how directly the sentiments they express stand in opposition to those maintained by Mr. Roocke on the same subject. in the report now under immediate attention: "With respect to the observation of the Collector, that the talookdars have expended large sums of money in bringing the lands into a productive state, we are induced to think he is misinformed on that point. The ryots generally clear and cultivate the lands at their own expense. The period of exemption from rent may in some instances exceed that specified in the talookdar's grant, but the burthen of expense, generally speaking, falls on the ryot." With respect to the actual situation of the ryot in the permanently-settled territories, you observe that the records of Government contain numerous representations of the oppressed and miserable condition to which, in many cases, they have been reduced" (*paragraph 57*).

c. MR. HOLT MACKENZIE, 18th April 1832.

Sess. 1831-2, Vol.

Q. 2627.—Is the cultivation of the land supposed to have improved since the permanent settlement? I should say rather extended than improved; it has very greatly extended. I am not aware of any essential improvement, but I believe in some cases there has been improvement. Whatever may be thought of the probable consequences of having the landed property of a country divided among a multitude of petty proprietors (and I do not think we have experience enough to justify any dogma on the subject), it is certain that the existence of large zemindaries in Bengal has had no tendency to make farms large. And if in Ireland we find that beggarly farms and a wretched people may be conjoined with domains of princely magnitude, still more may we look for poverty and distress under the zemindary system of India, so long at least as the people retain the remembrance of their rights, and cling to their fields though rendered worthless by exaction. The injustice of the thing, and the mischief to the individuals thus placed in subjection to the Government assignee, are enough for condemnation. But I should further apprehend that the system must oppose a serious obstacle to the successful cultivation of new and better crops. The zemindar, who is neither agriculturist nor owner of the soil, and stands in a position little favourable to the growth of enlightened and liberal ideas, must be expected to act as a tax-gatherer, and as a short-sighted tax-gatherer nipping in the bud the seeds of improvement. And we cannot hope that any new or increased demand for the produce of the country

can be met with that promptitude which might be expected if the occupants were secured in their property, so long as the contractors for the Government revenue were on the watch for every new occasion of exaction, and the ignorance or inefficiency of our courts permit them unjustly and arbitrarily to tax the industry of the country. It is a curious fact, which I have more than once had occasion to state, but may now not uselessly repeat, that when it was an object to supply the demand for sugar in England, which existed in 1792, the Government of that day, who had doubtlessly clearly in view the *principles*¹ which Cornwallis intended to enforce in favour of the cultivators, did not hesitate to issue orders against the enhancement of the rent of the sugar-cane land.

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Para. 8, V, contd.

d.—MR. J. MILL.—*9th August 1831.*

Q. 3347.—Is it not the fact that the cultivation has extended in those provinces where the zemindary system prevails? I believe that is the fact.

Third Report,
Select
Committee, 1831.

Q. 3348.—To what do you ascribe that? There can be no doubt that this extension of cultivation implies an increase both of population and of capital. In order to enable the country to extend its cultivation farther, capital must have been applied to it, unless old land at the same time had gone out of cultivation. I have no doubt that there has been in Bengal considerable increase of capital and extension of cultivation;—but it is another question whether that has been owing to the zemindary system.

Q. 3349.—Would you not ascribe that accumulation of capital in any degree to the zemindary system? I should ascribe it in no degree whatever, because I have no idea that the zemindary system is favourable to the accumulation of capital in the hands of the ryots, and there is express evidence of the fact that it is the ryots, and not the zemindars, who have extended the cultivation.

Q. 3350.—By what means have the ryots extended the cultivation? Their numbers have increased; and where an estate of a zemindar borders upon waste land, it has been found that the ryots generally have advanced upon the waste and have carried on the cultivation by degrees.

Q. 3351.—Do you think the ryots have accumulated capital? The ryots cannot have done this without an extension of capital equal to those effects. They have multiplied considerably, and when the families increase, there is a sub-division of the property, and, in consequence of the sub-division of the property, there is a stimulus to the numbers of the family among whom the sub-division has been made to increase their income by attempting to cultivate the waste.

Q. 3352.—If the ryots have in any degree accumulated capital, is not that a proof that their situation has somewhat improved? Of some of them no doubt it has.

Q. 3353.—Then you would not say that the effect of the zemindary settlement has been unmixed injury to the ryots? Where the ryots have had an opportunity of obtaining fresh land under certain advantages, they have been able, under the zemindary system, to extend cultivation; but I conceive that they would have effected it better under another system.

¹ That is, a rent fixed for ever.

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Para. 8, V, contd.

Q. 3361.—I rather think, unless I mis-recollect, that Lord Cornwallis's statement was that there was only one-third of Bengal under cultivation; he did not, however, mean to say that there were two-thirds absolutely waste, for a large portion of that which is not under cultivation is still considered as pasture land? It is in one sense waste, but it is not absolutely useless. Lord Cornwallis may have also declared that there was a full third of Bengal that was jungle, and absolutely useless. But within a few years the declaration has been repeated, by people upon the spot, that not above one-third of Bengal is under cultivation.

Q. 3362.—Then, according to that statement, there would be one-third under cultivation, one-third in a state of jungle, and one-third in an intermediate state? That is probably something of an approximation to the fact.

Q. 3363.—Do you think that those proportions have been much changed since the time of Lord Cornwallis? The proportion, I should say, cannot be very considerably changed, because the amount of land is so great, that the increase of cultivation bears a very small proportion to it, although absolutely it is considerable.

e.—MR. A. D. CAMPBELL (IN HIS "ABLE PAPER," WHICH SUMMARISED THE EVIDENCE BEFORE THE SELECT COMMITTEE OF 1831).

Ibid, page 33.

There is, no doubt, ample proof that, under the permanent settlement in Bengal, as the population augmented, cultivation greatly increased, fully perhaps to the same extent as in the periodically settled districts; but in both there is express evidence that it is the cultivators alone who advanced upon the waste; and such increase of cultivation, though concomitant with the permanent settlement, was by no means caused by it. In the Lower Provinces of Bengal, indeed, the permanent settlement enabled the zemindars, by ousting the hereditary cultivators in favour of the inferior peasantry, to increase the cultivation by a levelling system, which tended to depress the hereditary yeomanry, or middle ranks of the community, and to amalgamate them with the common labourers and slaves, from whom the highest judicial authorities in Bengal are now unable to distinguish them;—a change which must have seriously depressed the middle class, the only solid basis of all further advancement or improvement.

f.—MR. R. D. MANGLES.—*3rd April 1848.*

Q. 3560.—In Bengal has there not been a large increase of cultivation, and great improvements in agriculture since the permanent settlement? Yes; a vast increase of cultivation;—but, I am afraid, not much improvement in the mode of agriculture;—almost all that has been done in the way of indigo and sugar has been done by Europeans; little, if any, improvement has taken place in the system of agriculture.

Q. 3628.—Do the zemindars make permanent improvements upon their estates? Not as a general rule.

Q. 3633.—Still, you admit that the extension of cultivation, and the growth of many articles has been greater in Bengal than in other provinces? The extension of the cultivation has been greater; but I apprehend that the growth of any articles—indigo is the principal one—has

not arisen, at all, directly from the effect of the permanent settlement, but from the great fitness of the soil and the climate of that part of the country for the growth of that particular article.

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Para. 8, V, contd.

g.—MR. WELBY JACKSON.—*15th November 1849.*

It is the resident cultivators who have brought the country into cultivation. It is to them that the improvement and extension of the tillage is to be ascribed. It is by their energy and toil that the Government is supported. They are the most valuable and most respectable class in the country. The zemindars, on the other hand, are mere farmers of the revenue; they may have capital, but never lay out capital on the land. They collect rigorously, often, it is believed, illegal cesses prohibited by law; but they do nothing for the improvement of the country. Rack-renting, the general practice of the zemindars where they can have recourse to it, is far from conducive to the improvement of the land.

h.—BABOO HURRIS CHUNDER MOOKERJEE, EDITOR OF THE *HINDOO PATRIOT*, AND AFTERWARDS ASSISTANT SECRETARY, BENGAL BRITISH INDIAN ASSOCIATION; BABOOS SUMBHUNATH PUNDIT, UNNODA PROSAD BOSE, GOVIND PERSAD BOSE, &c.—*27th September 1851.*

Frequent removals of habitation (ejectments) are proverbially injurious to the industrious classes of the Bengal peasant, who builds his own hut, irrigates and manures the land at his own expense, and owes his landlord nothing but the use of the bare natural powers of the soil, who is absolutely without a reserved capital, and is almost always encumbered with a family; a single removal completes the ruin.

i.—REV. A. DUFF AND 20 OTHER MISSIONARIES.—(*April 1857.*)

The extension of cultivation in Bengal, for which the zemindars claim credit, your petitioners ascribe not to enterprise, capital, or public spirit of the zemindars, but to the great increase of the population during the last hundred years of domestic peace.

k.—*See Appendix XIV, MIDDLEMEN, Para. 6, Section VIII.*

l.—MR. JUSTICE GEORGE CAMPBELL.—*1st June 1864.*

It is by no means the case in this country, that the improving holder is necessarily or usually the large zemindar. That is another theory borrowed from a totally different state of things in a peculiar country of great capitalists. Even there it seems not to be quite universally admitted. And in this country it is as yet absolutely and almost universally false in fact. The great zemindar, as a rule, (and the exceptions are most rare), does not spend a farthing on the improvement of his estate. He neither himself cultivates and introduces an improved agriculture, nor does he prepare farms for his tenants, build farm-houses, fence fields, drain and plant,—he does nothing whatever of all this. He performs none of the functions of a landlord in the English sense: he merely permits ryots to cultivate at their own expense, and takes from them the dues to which the law entitles him, or more if he can.

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Para. 8, V, contd.

So far as I have been able to see and learn, the only really important class among native agriculturists are the small holders, the better ryots at fixed easy rents in prosperous parts of the country, and the maafeedars, putnidars, and the like, who carry on cultivation for part on their own account. Men of such classes are, I understand, numerous in some districts of Lower Bengal; and, to take a well known instance, by them, and not by great zemindars, has a great sugar culture been introduced of late years by planting date trees, a species of culture which requires some outlay of capital, since the trees produce for several years.

Even as regards European "Plantation," I believe it is not that, as they are circumstanced in this country, it is rather common and as manufacturers than as agriculturists, that Europeans can do good. To take the land into their own hands and cultivate a system which never pays. Give them the most absolute right, and they must let most of the land out to ryots after all. They are merchants, with great advantage, advance money for an improvement; they may with still greater advantage manufacture the plant or the cleaned cotton from the pod into chests of indigo and of clean pressed cotton; but for the cultivation they must mainly rely on the ryots, and to the better class of ryot, with a tenure which gives him some character, some vigour, and some command of funds.

m.—MR. JUSTICE SUMBHOONATH PUNDIT.—*19th June 1865.*

In this part of the country (Bengal) the zemindars do not improve their estates by laying out any large amount of capital in draining or otherwise improving the lands. In several localities, however, they advance seed or money to their ryots, build and maintain some embankments, or dig and keep clear and in working order certain water-courses, or prepare some wells. All these works and proceedings, general as such matters of necessity, that, without them, it would be impossible for the ryots to make any profitable cultivation *. *. In Bengal an attempt by a landlord to improve his estate is a thing unfortunately rare, and a contingency, written in the books of laws, but not practically real.

n.—MR. JUSTICE SETON-KARR—*19th June 1865 and 2nd June 1866.*

1. The zemindar, it is perfectly notorious, takes no part in controlling or assisting the various processes of agriculture, for I do not see the advance of tuccavee for seed, made occasionally in frontier or jungle districts, as anything but partial exceptions not to be taken into account. He bears none of the risk. He supplies none of the capital. He makes no contribution to the ryot's stock, and he is nowhere charged with the erection or the repairs of the ryots' houses, which do not belong to, and are never claimed by him, but which are invariably removed by the ryot when he changes his residence to some other village.

2. It is quite certain that no practical interference whatever in the rotation of crops by the cultivator, is ever attempted to be exercised by the zemindar. He never directs the cultivator to sow early rice in one year and hemp in the next, or to make the cold weather crops alternate

ly, mustard seed and barley. In fact he never troubles himself for a moment with such matters. The Bengal ryot, though restricted by the peculiarities of climate to the use of one single crop over a large portion of the country, cultivates his higher lands with tobacco, sugar-cane, or with oil-seeds, with indigo for seed, with vetches, with oats, with barley, or turns the same into a series of date gardens, at his own expense, and at his own choice and pleasure.

3. Excepting a few tanks dug, a few roads opened, and here and there a new haut or gunge established, after a series of disturbances by which the population had been half demoralised, the zemindars, it was notorious, had done absolutely nothing worthy of their position and name. No new products have been introduced by any native zemindars. Improvements in agriculture have not proceeded from them. Under their apathy the breed of cattle has to a certain extent degenerated.

4. On the other hand, considerable tracts of jungle have been cleared wholly at the expense of the ryots; and some of the higher kinds of cultivation, as for instance, those of the date-tree, of the sugar-cane, and of tobacco, are entirely due to the capital and the exertions of substantial ryots and jotedars; no zemindar has to this end, as far as I have been able to ascertain, contributed one farthing, or even given to the population below him the benefit of his example.

9. RESULTS OF THE PERMANENT SETTLEMENT.

Among the foremost of the results of the Permanent Settlement must be placed the destruction of those rights of millions of cultivating proprietors which in theory were reserved in the Proclamation of the zemindary settlement.

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Para. 9.

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I.—FIFTH REPORT, SELECT COMMITTEE.

It must have appeared, from what has been stated, that the inhabitants of the Company's territorial possessions, whose condition was considered to be the most improved by the introduction of the new system, were the class of landholders or zemindars. * * But in India, as already has been mentioned, subordinate rights were found to exist, which justice and humanity required should be protected, before the privileges of the zemindars, under the new system, were declared fixed for ever.

This was not done.

II.—MR. SISSON'S REPORT (2nd April 1815).

(a). The expected result of the decennial settlement was that "individuals would thereby be certain to enjoy the fruits of their industry; that it would dispense prosperity and happiness to the great body of the people, and increase the power of the State, which must be proportionate to the collective wealth that, by good government, it might enable its subjects to acquire."

Revenue Selections., Vol. I,
page 386.

(b). (There are but 202 zemindar families in Runigpore, 1793, Regulation I.) Two hundred families were not to aggrandise themselves at

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Para. 9, contd.

the expense of the rights of a million of under-tenants, but were told that "to conduct themselves with good faith and moderation towards their dependent talookdars and ryots, are duties at all times indispensably required from the proprietors of land; and that a strict observance of these duties is now, more than ever incumbent upon them, in return for the benefits which they will themselves derive from the orders now issued. The Governor General in Council, therefore, expects that the proprietors of land will not only act in this manner themselves towards their dependent talookdars and ryots, but also enjoin the strictest adherence to the same principles on the persons whom they may depute to collect the rents for them."

(c). This was the expected result; the actual result, as it appeared in April 1815, was as follows:—

Ibid., pages
331-32.

(1). It only remains for me to represent the relative state in Rungpore of the landlord and tenant, which will be the subject of the present address.

What I shall have occasion to bring to notice may possibly prove that, in Rungpore, it is not the prevalence of gang-robbery and other public crimes which calls the most loudly for remedy. These are but the ramifications of an evil, whose root has long flourished in secret. The arbitrary oppression, under which the cultivator of the soil groans, has, at length, attained a height so alarming, as to have become by far the most extensively injurious of all the evils under which that district labours. * * In the course of the present address I shall endeavour to show to what a height rapacity, seconded by the law of distress and sale and other instruments, has attained in the district of Rungpore.

III.—SELECT COMMITTEE, 1831-2.

1831-32,
XI,

(1). A great body of evidence has been taken on the nature, object, and consequences of this permanent zemindary settlement, and your Committee cannot refrain from observing that it does not appear to have answered the purposes for which it was benevolently intended by its author, Lord Cornwallis, in 1792-3. The Finance Committee at Calcutta, in their Report, 12th July 1830, acknowledge that, "in the permanently settled districts in Bengal, nothing is settled and little is known but the Government assessment."

(2). The causes of this failure may be ascribed in a great degree to the error of assuming, at the time of making the permanent settlement, that the rights of all parties claiming an interest in the land were sufficiently established by usage to enable the courts to protect individual rights; and still more to the measure which declared the zemindar to be the hereditary owner of the soil, whereas it is contended that he was originally, with few exceptions, the mere hereditary steward, representative, or officer of the Government, and his undeniable hereditary property in the land revenue was totally distinct from property in the land itself.

(3). Whilst, however, the amount of revenue payable by the zemindar to the Government became fixed, no efficient measures appear to have been taken to define or limit the demand of the zemindar upon the ryots, who possessed an hereditary right of occupancy, on condition

of either cultivating the land, or finding tenants to do so. Without A going into detail to show the working of the system, it may be proper to quote the opinion of Lord Hastings, as recorded in 1819, when he held the office of Governor General of India. "Never," says Lord Hastings, "was there a measure conceived in a purer spirit of generous hu- RESI
P.
S.
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Vol. manity and disinterested justice, than the plan for the permanent settlement in the Lower Provinces. It was worthy the soul of Cornwallis. Yet this truly benevolent purpose, fashioned with great care and deliberation, has, to our painful knowledge, subjected almost the whole of the lower classes throughout these provinces to most grievous oppression; an oppression, too, so guaranteed by our pledge, that we are unable to relieve the sufferers; a right of ownership in the soil, absolutely gratuitous, having been vested in the person through whom the payment to the State was to be made, with unlimited power to wring from his co-parceners an exorbitant rent for the use of any part of the land."

(4). An opinion not less strong was recorded at the same time by Sir E. Colebrooke, then a Member of the Supreme Council, who observed that "the errors of the settlement were two-fold: first, in the sacrifice of what might be denominated the yeomanry, by merging all tillage rights, whether of property or of occupancy, in the all-devouring recognition of the zemindar's permanent property in the soil; and then leaving the zemindar to make his settlement with the peasantry as he might choose to require."

(5). If, then, the conclusion may be formed that the permanent settlement of Lord Cornwallis has failed in its professed object, it must be a matter of anxious enquiry to ascertain how far the evils of the system are capable of being remedied.

IV.—*Lord Moira's Revenue Minute, 21st September 1815.*

(a). The situation of the village proprietors in large estates, in farms and jagheers, is such as to call loudly for the support of some legislative provision. This is a question which has not merely reference to the Upper Provinces, for within the circle of the perpetual settlement, the situation of this unfortunate class is yet more desperate; and though their cries for redress may have been stifled in many districts, by their perceiving that uniform indisposition to attempt relieving them which results from the difficulty of the operation, their sufferings have not on that account been the less acute (*para. 138*). Ibid

(b). In Burdwan, in Behar, in Benares, in Cawnpore, and indeed wherever there may have existed extensive landed property at the mercy of individuals, whether in farm, in talook, in jagheer, or in zemindary of the higher class, the complaints of the village zemindars have crowded in upon me without number; and I had only the mortification of finding that the existing system, established by the legislature, left me without the means of pointing out to the complainants any mode in which they might hope to obtain redress (*para. 139*).

(c). Of these complaints I beg leave to lay before your Honorable Board the accompanying original, received at Patna from a *moohurr* on the part of the village proprietors of Tuladah, together with the abridged translation of it. I beg to assure your Honorable Board,

APP. IV. however, that the oppressions alleged against the Rajah of Benares and Sheo Nerayun, against the Jagheerddhar Nemudar Gur Ghosain, and other large holders, were not less flagrant or apparently less substantiated than those alleged in this petition against Baber Ally Khan, the holder of the life-ijarah of Tuladah. In all these tenures, from what I could observe, the class of village proprietors appeared to be in train of annihilation, and unless a remedy is speedily applied, the class will become extinct. Indeed, I fear that any remedy which could be proposed would even now come too late to be of any effect in the several estates of Bengal, for the license of twenty years, which has been left to the zemindars of that province, will have given them the power—and they have never wanted the inclination—to extinguish the rights of this class, so that no remnants of them will soon be discoverable (*para. 140*).

(d). The cause of this is to be traced to the incorrectness of the principle assumed at the time of the perpetual settlement, when those with whom Government entered into engagements were declared the sole proprietors of the soil. The under proprietors were considered to have no right except such as might be conferred by pottah, and there was no security for their obtaining these on reasonable terms, except an obviously empty injunction on the zemindar amicably to adjust and consolidate the amount of his claims (*para. 141*).

(e). (Here follow six paragraphs of which two will be found in Appendix No. X, para. 6, section 1b).

(f). If it were the intention of our Regulations to deprive every class but the large proprietors who engage with Government, of any share in the profits of the land, that effect has been fully accomplished in Bengal. No compensation can now be made for the injustice done to those who used to enjoy a share of these profits under the law of the empire, and under institutions anterior to all record for the transfer of their property to the rajahs (*para. 148*).

(g). In Behar, however, and in Benares, the stand which was made by the mofussil zemindars has been rather more successful, and the class has not yet been entirely proscribed and hunted down; but unless some effectual measures are taken to stop the evil, the petition I have now the honor to lay before your Honorable Board is sufficient to show that such will be the ultimate consequence of our system, even in those provinces (*para. 149*).

But oppression marches with no halting pace; the condition of the ryots in Behar, in 1878, is far worse than that of ryots in any part of Bengal; it is benevolence only that has halted since it exhausted itself in creating great zemindars at the expense of millions of cultivating proprietors.

V.—RESOLUTION OF GOVERNMENT, 1st August 1822.

(a). As far, therefore, as concerns the ryots, the perpetual settlement of the Lower Provinces must, His Lordship in Council apprehends, be held to have essentially failed to produce the contemplated benefits,

with whatever advantages it may have otherwise been attended (*para. 122*). App. IV.

(b). As to the expediency of maintaining the tenures of the ryots, or of allowing them to fall into the condition of tenants-at-will, the Governor General in Council cannot view it as a question debatable. Their rights, His Lordship in Council considers, it is the bounden duty of Government to maintain (*para. 123*). RULES OF THE
PERMANENT
SETTLEMENT.
Para. 6, contd.
Beng. 1831-32,
Vol. XI,
page 301.

VI.—MR. HOLT MACKENZIE, 1832.

It must also be admitted that we have hitherto failed to secure for the landowners of Bengal that precision and certainty as to the other circumstances of their property which the permanent settlement has given in respect to the Government demand. * * * The grand objection to the permanent settlement is that it has in a multitude of cases left the owners of the land subject to demands on account of Government revenue even less settled and defined than if we still retained the right of varying the assessment; and scarcely any one, I imagine, can doubt that the effect must have been very prejudicial to the interests of the community, and must have impeded the progress of national wealth. * * The zemindar, who is neither agriculturist nor owner of the soil, and stands in a position little favourable to the growth of enlightened and liberal ideas, must be expected to act as a tax-gatherer, and as a short-sighted tax-gatherer, nipping in the bud the seeds of improvement. And we cannot hope that any new or increased demand for the produce of the country can be met with that promptitude which might be expected if the occupants were secured in their property, so long as the contractors for the Government revenue were on the watch for every new occasion of exaction, and the defectiveness of our revenue arrangements, and the ignorance or insufficiency of our courts ~~prevent them~~ unjustly and arbitrarily to tax the industry of the country.

VII.—MR. CANNING, PRESIDENT OF THE BOARD OF CONTROL, 17th August 1817.

2nd.—That the same views and motives which dictated the original introduction of the permanent settlement 25 years ago, would not, after the experience which has been had of it, justify the immediate introduction of the same system into provinces for which a system of revenue administration is yet to be settled.

3rd.—That the creation of an artificial class of intermediate proprietors between the Government and the cultivators of the soil, where a class of intermediate proprietors does not exist in the native institutions of the country, would be highly inexpedient.

4th.—That no conclusive step ought to be taken towards a final settlement of the yet unsettled provinces until it shall have been examined, and if possible ascertained by diligent research and comparison of collected testimonies, as well as by accurate survey of the lands to be settled, how far the principles of a system which would bring the Government into immediate contact with the great body of the people can be practically and usefully applied to them.

VIII.—MR. J. MILL, *2nd August 1831.*

Third Report,
Select Committee,
1831-32.

Q. 3138. To what extent do you believe that the permanent settlement did affect the rights of the ryots? I believe that, in practice, the effect of it has been most injurious. The most remarkable circumstance, and that by which all the rest seem to have been influenced, was the interpretation put upon the effect of the sales of land, particularly of the sales that were made for recovering arrears of revenue. The idea came to be entertained that the purchasers at those sales were proprietors. They were denominated proprietors. A man that purchased an estate was considered to be the proprietor of that estate; and in consequence of this notion of proprietorship, and the great powers that are annexed to it in the mind of an Englishman, an idea seems to have been entertained that the purchaser of this estate purchased the rights over it as completely as a man would purchase rights over an estate by purchasing it at a public sale in England. Those auction-purchasers, as they are called, proceeded to act upon this assumption, to impose new rates upon the ryots, and even to oust them wherever they found it convenient. When applications were made to the courts; and they were not easily made, because the people are exceedingly passive, the judges, for the most part, coincided in opinion with those auction-purchasers, and decided that their rights included every thing, and that the ryots were in the condition of tenants-at-will. This had proceeded to a very considerable length, because, during the first years of the operation of the permanent settlement, a very great transfer of property took place. It appears, also, that the same sort of feeling as to the rights of the ryots, which was thus spread by the interpretation of this act of purchasing, has pervaded also the other properties which had not changed hands, and even those cases of transfer which took place by private bargain; and that generally in Bengal now there is hardly any right recognised as belonging to those inferior holders.

Q. 3139.—Do you conceive that at present the transfer of property by any means is held to give the new acquirer a complete right over the cultivators? I believe so; the thing is not so distinctly made out upon the records in other cases as in that of auction purchasers, but there is every

reason to infer that the same sort of feeling, that was generated in the case of those estates that were sold, now pervades the whole of them. There is a very remarkable expression in one of the despatches from the Government of Bengal, that the rights of the ryots in Bengal, under the operation of the permanent settlement, had passed away *sub-silentio*.

APP. IV.

RESULTS OF THE
PERMANENT
SETTLEMENT.

Para. 9, contd.

IX.—LAW AND CONSTITUTION OF INDIA, 1825.

“It is of the utmost importance,” says Mr. Colebrooke, “to conciliate the great body of landed proprietors, to attach to the British Government this class of persons, whose influence is most permanent and most extensive.” But the fact is, that the “great body of landed proprietors,” to whom the above does, *in reality*, though not intentionally, apply, are just that class of people which the permanent settlement of Bengal has completely destroyed, and instead of conciliating, has blotted out from among the different gradations of society in that province. The village cultivating zemindars, the best of the people, honest, manly, independent men, that are now to be met with in every village of the Upper Provinces, the younger branches of whose families crowd our armies and crown them with incessant victory—the permanent settlement has annihilated this class of men in the Lower Provinces, or totally and entirely changed their character.

Pages 169-70.

X.—HALLIDAY ON LAND TENURE AND THE PRINCIPLES OF TAXATION, 1832.

(a). A lamentable instance of the want of real information in regard to the nature of the land tenure in India, is exhibited in the legislative enactments consequent upon the discussions of the zemindary question before the Hon'ble Houses of Parliament in 1781-82, by which the allodial interests of millions of proprietors were destroyed, in order to establish on their ruins a landed aristocracy in the persons of the tax-gatherers.

Page IV.

(b). Trivial and inadequate, indeed, was the amount of redress which the judicial courts were empowered to afford to the *raeeuts*; the judges were tied down by the Code, which limited the rights of the *raeeut* to the stipulations in his lease, and little, in the shape of retributive justice, could be granted to them. * * “The extreme propensity of the natives to litigation” has often been quoted, oftener urged in excuse for the measures of severity resorted to, with the view of preventing what appears to be an evil of unlimited extent. Perhaps the native character is not sufficiently understood; may not the overwhelming accumulation of civil causes be, with greater justice, attributed to the effects of a Code ill adapted to the genius and prejudices of the people, than to their love of legal strife? That an increase of criminality, in Bengal especially, where the result of the operation of the Code has been more severely felt, may be ascribed to it, no one, who has had opportunities of seeing its effects upon the minor orders of the agricultural community, will deny.

(c).—Practical experience of its merits fully proves that it has failed to gain for the Government the love of the most quiet and submissive portion of its subjects, while the influence possessed by the very powerful class of exclusive proprietors created by the Code, has more frequently been excited to counteract the views of the ruling power, than to support its interests. Much might be said upon this branch of the subject.

APP. IV. is by no means clear that the transfer of the rights of the ancient allodial proprietors to a race of hereditary tax-gatherers, of clerks to British houses of agency, and of sirkars and moonshees from Writers' Buildings, has been productive of either advantage or reputation to the British name.

RESULTS OF THE
PERMANENT
SETTLEMENT.

Para. 9, contd.

XI.—SIR HENRY MAINE—(VILLAGE COMMUNITIES)—

A province like Bengal Proper, where the village system had fallen to pieces of itself, was the proper field for the creation of a peasant proprietary; but Lord Cornwallis turned it into a country of great estates, and was compelled to take his landlords from the tax-gatherers of his worthless predecessors. The political valuelessness of the proprietary right thus created, its failure to obtain any wholesome influence over the peasantry, and its oppression of all inferior holders, led to distrust of the economical principles implied in its establishment.

XII.—EDITOR OF THE *Hindoo Patriot*, BABOO SUMBHUNATH PUNDIT, AND OTHERS, 27th September 1851.

The legal condition of the tenure by which the greater portion of the land in Bengal is held has been deteriorating for the last sixty years by successive degrees, from a sort of proprietorship not much inferior to an *allodium*, and is strongly tending towards a mere tenancy-at-will. Without entering into the question of the policy of this revolution in property, it is of importance to bear in mind that of this change the peasantry as a body are wholly ignorant. Hence rights of occupancy determine in a large number of cases without the cognizance of the owners. It is but a venial offence on the part of the rural population of this country, that they are not well acquainted with the extent and limit of their rights. The fact is that the ignorance extends to the highest quarters. In a despatch to the Hon'ble the Court of Directors, dated the 22nd February 1827, the Government of Bengal "ascribe the alleged inadequacy of our civil tribunals in the Lower Provinces to meet the demands upon them to the precipitation with which the permanent settlement was carried into effect, without previously defining the relative rights and interests of the zemindars and other landholders and the various classes of the cultivating population." * * The proposed law "to facilitate the ejection of occupiers of land whose title has ceased," if passed, will, we have ample reason to fear, complete, for the immense majority of the nation, the misery of their cottierism.

XIII.—MR. W. G. ROSE, INDIGO PLANTER, MOORSHEDABAD, 6th March 1841—

Several of the most influential zemindars in Bengal have opportunities of stating their grievances to His Lordship in person, and to those in office whom His Lordship is in the habit of consulting on such matters, but the voice of the poor ryot they never hear. It is a notorious fact that the ryots of Bengal are worse off now, that is poorer, than they were fifty years ago, and are getting poorer and poorer every day, and the present Regulation, if passed, will not make them any richer. Hardly a single village in Bengal is able to pay its rents

punctually. Let Government enquire into the cause of this. * Govern-
ment have much to answer for in not having done more than they
have to protect the interests of the agriculturists and ryots of Bengal.

APP. IV.

RESULTS OF THE
PERMANENT
SETTLEMENT.

Para 9, contd.

XIV.—REV. A. DUFF AND 20 OTHER MISSIONARIES, *April 1875.*

(a). The tenants suffer from a lax administration of laws passed for
their protection; they are oppressed by the execution of other laws
which arm the zemindars with excessive power; they do not share with
the zemindars in the advantages derived from the development of the
resources of the country; the profits thus monopolised by the zemindars
are already incalculably valuable, and year after year the condition of
the tenants appears more and more pitiable and hopeless. * *
Ignorant of his rights, uneducated, subdued by oppression, accustomed
to penury, and sometimes reduced to destitution, the cultivator of the
soil in many parts of this Presidency derives little benefit from the
British rule, beyond protection from Mahratta invasions.

(b). * * The causes to which the misery and degradation of the
peasantry must be attributed are manifold; such as the long continued
prevalence of Hindoo idolatry and Mahomedan oppression, of early mar-
riages and the prejudices of caste; also the innate defects of the
national character and the density of the population. Causes like these
cannot well be remedied by legislative enactments; but there is another
which appears to admit of such a remedy, namely, the mutual relations
between the zemindars and the ryots, to which the alarming deterioration
of the peasantry must be, in a great measure, attributed; whilst at the
same time it places the zemindars in a position which is calculated to
prolong the evil to an indefinite period without any prospect of im-
provement. * *

(c). The zemindars are almost all, however, in the habit of treating
their ryots, not merely as their tenants, but as their ~~serfs~~. They call
themselves rajahs or kings, and the ryots their subjects. They almost
universally claim either more than their due, or else they claim it in an
improper manner, for it is not easy to determine what is really their
due. They exact contributions from their ryots for funeral rites, annual
heathen festivals, and when a marriage, or a birth, or a death takes
place in the family. These practices are almost universal. In numerous
localities they exact from the ryots gratuitous labour in the field or at
the oar, and compel the poor people to allow them ~~without payment~~ the
use of their rattle or their boats, if they ~~possess any~~. In 1852, especially at a considerable distance from the ~~main station~~, for
zemindars to go still further in the abuse of their power, or in ~~imprisonment and torture upon any ryot who may have incurred their~~
displeasure.

(d). (In another petition in March 1855, ~~requesting the Gov. to~~
was passed as Act X of 1859). This ~~Bill had the effect of~~ ~~giving~~
petitioners believe, secure relief to ~~the ryots~~, ~~and~~ ~~of the~~
of the tenants of Bengal from extensive and ~~various~~ ~~forms of~~ ~~oppression~~

XV.—MR. A. J. M. MILLS, JUDGE OF ~~the~~ ~~Supreme Court~~, ~~Calcutta~~
1852.

The condition of the ryot in Bengal is now ~~improved~~, ~~in~~
means of obtaining redress against a ~~tyrannical~~ ~~landlord~~

PP. IV. 10. REMEDIES.

I.—LORD CORNWALLIS, *3rd February 1790.*

(a). I agree with Mr. Shore that some interference on the part of Government is undoubtedly necessary for effecting an adjustment of the demands of the zemindars upon the ryots; nor do I conceive that the former will take alarm¹ at the reservation of this right of interference, when convinced that Government can have no interest in exercising it, but for the purposes of public justice. Were the Government itself to be a party in the cause, they might have some grounds for apprehending the result of its decisions.

(b). Many regulations will certainly be hereafter necessary, for the further security of the ryots in particular, and even of those talukdars who, to my concern, must still remain in some degree of dependence on the zemindars. * * I cannot, however, admit that such regulations can in any degree affect the rights which it is now proposed to confirm to the zemindars; for I never will allow that, in any country, Government can be said to invade the rights of a subject when they only require, for the benefit of the State, that he shall accept of a reasonable equivalent for the surrender of a real or supposed right, which in his hands is detrimental to the general interest of the public, or when they prevent his committing cruel oppressions upon his neighbours, or upon his own dependents.

II.—COURT OF DIRECTORS, *19th September 1792.*

(a). We therefore wish to have it distinctly understood, that while we confirm to the landholders the possession of the districts which they now hold, and subject only to the rent now settled, and while we disclaim any interference with respect to the situation of the ryots, or the sums paid by them, with any view to any addition of revenue to ourselves, we expressly reserve the right, which clearly belongs to us as sovereigns, of interposing our authority in making from time to time all such regulations as may be necessary to prevent the ryots being improperly disturbed in their possessions, or loaded with unwarrantable exactions. A power exercised for the purposes we have mentioned, and which has no view to our own interests, except as they are connected with the general industry and prosperity of the country, can be no object of jealousy to the landholders, and, instead of diminishing, will ultimately enhance the value of their proprietary rights.

(b). Our interposition, where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government, under which it appeared to be a general maxim that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupied. This necessarily supposes that there were some measures and limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zemindar, for otherwise such a rule would be nugatory:—and, in point of fact, the original amount seems to have been annually ascertained and fixed by the act of the sovereign (*para. 46*).

¹ Far from taking alarm, they took advantage of *hufstum* and *punjum* and other means of destroying the ryots' rights, which rights Lord Cornwallis had hoped that they would respect and cherish from self-interest.

(c). It was in conformity with the principles laid down in the minute of Lord Cornwallis dated 3rd February 1790 (Appendix VI, para. 2, I and II), that we, having then before us the recorded discussions which had taken place between him and Mr. Shore, made the reservations which are declared in our despatch of 19th September 1792, that "while we confirm &c., (extracts *a* and *b* above: Court's letter, 15th January 1819).

APP. IV.

REMEDIES.

Para. 10, contd.

III.—TO COURT OF DIRECTORS, 6th March 1793.

We shall further declare (although a clause to that effect has been inserted in the engagements with the landholders), that you do not mean, by fixing the public demand upon the lands, to debar yourselves from the exercise of the right inherent in you as sovereigns of the country, of making such regulations as you may occasionally think proper for the protection of the ryots and inferior landholders, or other orders of people concerned in the cultivation of the lands (*para. 23*).

Select Committee, 1810,
Appendix No. 2,
page 103.

IV.—BENGAL GOVERNMENT TO COURT OF DIRECTORS, 1st August 1822.

(a). With respect to the precise measures to be adopted, it is not easy to come to any determination, for the evil exhibits itself in a vast variety of forms, and in a countless number of individual cases. * * In the Ceded and Conquered Provinces, our separate despatches relative to the settlement will show that we design, as far as practicable, to adjust, through the agency of the collectors, the rights and interests of every ryot in every village as it may be settled, and specifically to define the rights of the zemindars, with reference to the mofussil jumma bundy so made. The existence of the permanent settlement in the Lower Provinces does not, in our judgment, oppose any legal bar to the adoption of a similar course there, if we can command sufficiency of fit instruments and the scheme be generally deemed expedient; for Government, in limiting its demand, specifically reserved the option of such interference; and if the zemindars have themselves failed to assess their ryots and to issue pottahs on equitable terms as provided, such an interference would require no other justification than the proof that it could be expediently exercised.

Revenue Selections, Vol. III, pages 411-412.

(b). As soon, therefore, as the regulation relative to the settlement of the Ceded and Conquered Provinces is published, we propose consulting the Revenue Boards on the expediency of enacting such rules as may enable the Revenue authorities in the Lower Provinces, under proper restriction, to make a mofussil settlement with the cultivators of estates held subject to a fixed jumma, or free of assessment, on behalf of the sudder malguzars or lakhirajdars.

(c). The subject, however, is so difficult and important, and the magnitude of the work to be performed is so strongly in contrast with the extent of the machinery we can apply to its accomplishment, that we must entreat your indulgence if we shall appear unnecessarily to postpone our final determination.

APP. IV. V.—SELECT COMMITTEE, 1831-32—

REMEDIES.

Para. 10, contd.

(After the passage quoted in paragraph 9, section III). So long as the zemindar pays his fixed assessment, the Government have not interfered to regulate the cultivators' rates; but where arrears accrue, and a public sale of the zemindary revenue, as prescribed by the regulations, takes place (except the sacrifice on account of purchase money is very great), the authorities at home have directed every zemindary tenure "to be purchased on the part of the Government, and then settled with the ryots on the ryotwar principle." This order, it appears, has as yet had little practical effect in the Bengal Presidency, where it was at first opposed by the local authorities.

(b). Although such purchase and resumption of the right to manage the land revenue is the best mode for the Government to acquire the power of effectual interference on behalf of the ryots, the sacrifice of money requisite for the purpose would be so great as to impede the working of the system, if the sales of zemindaries for default of payment were numerous and extensive; and unless the Government should, either by public or private purchase, acquire the zemindary tenure, it would, under the existing regulations, be deemed a breach of faith, without the consent of the zemindars, to interfere directly between the zemindars and the ryots for the purpose of fixing the amount of the land-tax demandable from the latter under the settlement of 1792-93.

11. Summing up the information in this Appendix, we find that—

I. (Paragraphs 1 and 2).—The permanent settlement was conceived by Mr. Francis in a self-sufficient ignorance, and was carried out with precipitancy. With indecent haste, a weak benevolence destroyed the rights of millions of real proprietors, and created a small class of artificial or fictitious proprietors who, however, very soon acquired the terrible reality which insatiable demands, exaction, and oppression could give them.

II. (Paragraphs 3 and 4).—This was done in furtherance, forsooth, of injunctions of Parliament, and instructions of the Court of Directors, which had no other object than to continue established usage and principle (as indeed Parliament had no right to ex-propriate without giving full compensation), to secure real proprietors in the enjoyment of their rights, and to permanently limit the Government demand, and that, too, in only such sense permanently, that it should not be alterable except by the Court of Directors, in some urgent and peculiar case.

III. (Paragraph 5).—Even the author of the scheme of a permanent settlement, Sir Philip Francis, did not propose anything more than a settlement of the Government demand (with temporary cesses for extraordinary expenses of the

State), whoever might be the proprietor; and he proposed that the zemindars, with whom the Government permanently settled its demand, should give the same security of a permanent rent to their under-tenants. APP. IV.
PART. II, contd.

IV. (Paragraph 6).—The principal objects of a permanent settlement were thus variously described by divers authorities.

a. COURT OF DIRECTORS.—To give to the different orders of the community a security which they never before enjoyed, to protect the zemindars and *ryots* from harassment by increasing debts from an increase of the Government demand, and to relieve the proprietors of small estates from the tyranny of powerful zemindars.

b. LORD CORNWALLIS.—That the zemindars of Bengal, on whom His Lordship was bestowing, as a free gift, one-third to two-thirds of the culturable area of Bengal, then lying waste, should, with the help of that gift, guard against inundation and drought, “the two calamities to which this country must ever be liable;” that (the Government demand upon them being fixed, and their income increasing with the extended cultivation of waste) they should refrain from exactions, should assist the *ryots* with money, and do all other duties which “ought to be performed” by zemindars.

c. SIR JOHN SHORE.—We must give every possible security to the *ryots*, as well as, or not merely, to the zemindars. This is so essential a point that it ought not to be conceded to any plan.

d. In case of a foreign invasion (said Lord Cornwallis), the proprietors (whom His Lordship expropriated by millions) were to be attached to us from motives of self-interest, and from a feeling of security that their rent could not be raised in proportion to their improvement of their lands, and that they could not be dispossessed or imprisoned for arrears of rent, or for refusal to pay an unjustly enhanced rent.

V. (Paragraph 7).—These were noble ends, or silly ones (as of children crying for the moon), according as the authorities who conceived these aims, at a time when they were still serving their apprenticeship in the civil administration of an immense and strange country, set about their purpose circumspectly or in rash presumption and ignorance. We find that—

a. “Without much concern for the production of revenue Mr. Francis assumed that the property of the land belonged

APP. IV. to the zemindars, and that the pottahs which the grateful zemindars would honestly grant to the ryots would protect the latter from exaction. (The forcing of pottahs upon ryots proved one of the most effectual means of the destruction of ryots' rights by the zemindars.)

b. The Court of Directors, having prohibited the Collectors from entering into detailed enquiries on essential points when the decennial settlement was ordered, Sir John Shore, in deprecating the perpetuation of that decennial settlement as the permanent settlement, objected that there was great uncertainty about ryots' rights, and ignorance on the part of the ryot himself of what he should pay. Lord Cornwallis replied that if the Collectors, who ought to have known (but who, till three years since, were ordered not to know), knew but little, the Government knew still less, and could not hope to know more; and was the Government calmly to sit down, without creating great zemindars? "I must declare that I am clearly of opinion that this Government will never be better qualified, at any given period whatever, to make an equitable settlement of the land revenue of these provinces." The question, said Lord Cornwallis, "that has been so much agitated in this country, whether the zemindars and talookdars are the actual proprietors of the soil, or only officers of Government, has always appeared to me to be very uninteresting to them." It did not occur to His Lordship that the question was of overwhelming interest to the ryots; that his benevolence, like the bloody oppression of Jezebel, was taking Naboth's field, or the poor man's inheritance from his fathers, by the million, for gifts to rapacious and unworthy zemindars; and so, in three years, or in not quite one-fifth of the time that, in the present day, the Government of the North-Western Provinces, with the full knowledge of rights, acquired in a past settlement, is taking to revise, for only thirty years, the last expired settlements, Lord Cornwallis turned a decennial into a permanent settlement, after an experience of three years, which had sufficed to show him how ignorant his Government was, and that it could learn nothing more.

c. The ignorance of Lord Cornwallis was so profound, that he placed the village accountants entirely under the zemindars;—that is, he transferred "this most useful check against the exactions of the more powerful from the more helpless classes to the exclusive charge of the zemindars; for they thus obtained the complete surrender of the great check against their own rapacity."

VI.—It is not surprising that good intentions should have turned into folly or worse, when pursued in a credulous optimism, with rash presumption, and in disregard of the Government's paramount duty to adapt its means to its most momentous ends, *e. g.*—

APP. IV.

Para. II, contd.

a. It was expected that the zemindar would assist the ryots with money for the expenses of cultivation. He lent them money on heavy interest.

b. The zemindar would improve his estate by laying out money in agricultural improvements; not quite thirty years showed that he did nothing of the kind; and that the ryots had to combine among themselves to provide for small improvements. The increase of cultivation which has taken place since the permanent settlement, and more particularly since 1848, is mainly due to the increase of population, and to a rise of prices, particularly of kinds of produce for which the soil and climate of Bengal are peculiarly fitted.

c. The zemindar having the benefit of all the revenue from waste lands, which an increase of population, and not his enterprise, brought into cultivation, was to obey the law which prohibited him from increasing the ryot's rent. His cheerful compliance with law was shown by his appreciation of *Huftum* and *Punjum*, and by his multiplication of suits for the enhancement of rent.

d. The zemindar, with an income improved by the cultivation of extensive waste lands, was to provide against famine. In 1874-75 the Government spent six and a half millions sterling for the famine in Behar, that is, added to the Imperial debt a yearly charge of £292,000 for interest, while the land revenue from Behar is only £970,000, and the increase of that revenue since 1793 has been only £440,000, from lands not included in the settlement of 1793.

e. The Government was to be compensated for the permanent limitation of the land revenue demand by inland transit duties, and an increase of customs duties. The transit duties were abolished in 1836; the customs duties have been threatened with abolition.

f. The object of the permanent settlement was to give security and contentment to the "great body" of inhabitants (para. 6, section III*a*), that is, to the millions of cultivating proprietors; it is precisely that class which the settlement has destroyed.

VII.—The failure of the permanent settlement in its essential objects was apparent so early as 1812, on evidence

P. IV. of an earlier date tendered to the Select Committee which wrote the Fifth Report; it was abundantly clear to the Indian authorities that administered the country in 1815 and until 1831-32, when another Select Committee of Parliament formally recorded that, in the permanently settled districts in Bengal, nothing had been settled, and little was known but the Government assessment. In other words, the destruction of ryots' rights was known in less than twenty years after the permanent settlement, that is, before rights in wrongs had become vested rights, and when the good faith and honour of England were specially concerned in redressing the wrong; but beyond a record in a "Resolution" in 1822, that it was the "bounden duty of Government to maintain" ryots' rights, nothing was done.

VIII.—The precipitancy which caused the failure of the permanent settlement was not unavoidable; the authorities that rashly hastened the settlement were still but serving an apprenticeship in civil administration in India; had they waited but awhile they would have acquired the knowledge, which, a few years later, sufficed for condemning their errors and preventing a repetition of the mistakes in the North-Western Provinces.

IX.—Even this much of patience was not necessary. If the authorities were incontinently bent on establishing the permanent settlement, it behoved them simply to do as the Madras Government did, about the same time, when introducing a permanent settlement into the Northern Circars, *viz.*, to fix, as the zemindar's maximum permanent demand on the ryot, the actual rate which was being paid by the latter at the time of introduction of the settlement. Instead of that, there was fixed a pergunnah rate which, it has been ruled, has no finality, and which being undetermined to this day, is the one principal cause of injurious litigation, and of strained relations between zemindars and ryots, eighty years after a settlement which was designed to protect the ryot from harassment by exactions.

X.—The Indian Government, however, reserved power in the engagements with the zemindars, and the Court of Directors, in their despatch confirming the settlement, reserved the right inherent in the British Power as sovereigns of the country, of making, from time to time, such regulations as might be thought proper for the protection of the ryots and the inferior landholders, or other orders of the people concerned in the cultivation of the land.

XI.—The bestowal of power on the zemindar to increase the ryot's rent is destructive of proprietary right in the latter. The authors of the permanent settlement contemplated, from the first, that the demand upon the ryot should be permanently fixed in the same way as the Government's demand upon the zemindar, *e. g.*—

a. Sir Philip Francis, para. 5, *d.*

Sir John Shore, „ 6, IV, *c, d.*

Court of Directors „ 6, VI, and 10, II.

Sir John Shore „ 7, IX, *a, b.*

Bengal Government „ 10, IV.

Lord Cornwallis, compare para. 6, III*a* and *d* with „ 10, I*a* and *b* and III.

Lord Cornwallis—*see* also Appendix VII, para. 2, sections I to III, and paras. 3 and 4.

XII.—This intention of permanently fixing the zemindar's demand upon ryots under the permanent settlement was carried out in that day,—when the intentions of the framers of the settlement were fully understood,—in the permanent settlements of Benares and of the zemindary tracts in the Madras Presidency. Indecent haste, ignorance, and mistakes caused the failure in Bengal of the like intentions, without the complete execution of which the zemindary settlement in Bengal became an act of spoliation and confiscation of the property of millions, unless it be affirmed (and it may be truly affirmed) that Lord Cornwallis made the zemindars proprietors of but the alienated part of only the Government's permanently limited gross share of the produce of the soil, the rest of that produce remaining with the resident cultivator as proprietor of the land which he cultivated.

APPENDIX V.

GOVERNMENT AND RYOTS.

1.—THE RIGHT OF THE STATE IS IN THE PRODUCE, NOT IN THE SOIL.

APP. V. I.—BAILLIE—

The *ooshr* and *khiraj* are taxes on the vegetative powers of the soil. The soil itself, with everything belonging to it, is the absolute property of the owner. * * From the manner in which *ooshr* and *khiraj* was originally imposed on the land, it is evident that a Mahomedan sovereign has no possible pretension to be considered the proprietor of *ooshree* or *khirajee* land. *Khiraj* in particular is due by a proprietor of land to the sovereign as representative of the community, and the sovereign cannot be creditor and debtor at the same time.

II.—PHILLIPS—

The sovereign never claimed any right to the soil itself as part of his share, nor ever exercised a right to anything beyond the natural or accidental produce of the soil. * *

III.—BRIGGS—

Abundant evidence has already been adduced to prove that neither the Hindu nor Mahomedan sovereigns ever claimed to be proprietors of any part of the soil, but of the waste, or of the lands escheated in default of legal successors; and they certainly never pretended to deny the proprietary right of occupants. This fact must have struck the reader in every step of my enquiry. * * The reply of Gholam Hoossein Khan, one of the most able and intelligent Mahomedans in Bengal, to Mr. Shore, the present Lord Teignmouth, on this point, is full of value. The question is, "Why did the king purchase lands, since he was lord of the country, and might, therefore, have taken by virtue of that capacity?"

Answer.—"The emperor is not so far lord of the soil as to be able to sell or otherwise dispose of it at his mere will and pleasure. These are rights belonging only to such a proprietor of land as is mentioned in the first and second answers (*i. e.*, proprietor by purchase with the mutual consent of the parties; by gift from the proprietor; or by inheritance). The emperor is *proprietor of the revenue*, but he is *not proprietor of the soil*. Hence it is, when he grants *aymas*, *altungahs*, and *jageers*, he only transfers the revenue from himself to the grantee."

IV.—WILKS' MYSORE—

I shall conclude this branch of the subject with an extract from a Mahomedan law authority, which shall be hereafter quoted at greater

length,—“Inheritance is annexed to property, and he who has the tribute from the land, has no property in the land; hence it is known that the king has no right to grant the land which pays tribute, but that he may grant the tribute arising from it.”

APP. V.

STATE'S DEMAND
FIXED, WITH
ABWABS.

Para. 2.

V.—HARINGTON'S ANALYSIS (*quoting authorities of Mahomedan law on landed property*)—

Tributary land is held in full property by its owner, and so is tithed (or decimated) land. A sale, or gift, or a charitable devise of it is lawful, and it will be inherited like other property. * * And in the book *Alkhanayah* it is written,—“The sovereign has a right of property in the tribute or rent.”

Page 94.

VI.—LAW AND CONSTITUTION OF INDIA—

The people, by law, claim only a portion of the produce of the soil as their right; and as no trustee can have a stronger claim than his constituent, the right of the sovereign must also be limited to a portion of the produce, and a right in the produce is not a right in the soil.

Page 30.

VII.—Lord Moira's Revenue Minute, 21st September 1815—

The right of Government is to a certain proportion of the produce of every cultivated beegah. Such has been the recognized right of the ruling power in this country from time immemorial (Reg. XIX, Bengal, 1793), and it has descended to us entire and unimpaired (paragraph 28).

Parl. Papers,
Session 1831-32,
Vol. XI.

2.—STATE'S DEMAND FIXED (*with abwabs*).

I.—HAIHED (*Hindu law*)—

Land under cultivation was liable to a tax to the State of a certain proportion of its produce, the amount of which was an eighth, sixth, or twelfth part, according to the capabilities of the soil and the expense of the cultivation; the demands of the Government were limited to this amount, except on occasions of great public emergency, such as dearth, war, or foreign invasion, when a fourth part might be levied (*Munnoo*).

Page 2.

Assessment.

Abwab.

II.—HAIHED (*Mahomedan rule*)—

The usual jumma was ascertained about the year 1582, under the orders of the Emperor Akbar, by Rajah Torull-Mull, his Minister of Finance, upon statements of the actual sums paid by the ryots, furnished by the kanoongoes. * * The *abwabs* were not deemed legal taxes, but looked upon as unjust exactions, and were tolerated under a conviction that the evils or privations resulting from the payment of them were less in reality than those which would be superinduced by opposition or resistance. * * * In Behar and the Western Provinces there were but few instances of *abwabs* imposed as a permanent increase of the resources of the State; some temporary impositions or forced contributions are on record, but the people being of a more warlike and turbulent disposition,

Pages 43-44.

APP. V. the reason for their immunity is accounted for: some zemindari cesses have always been enforced and submitted to, which will be treated of presently.

STATE'S DEMAND
FIXED, WITH
AHWAAS.

Para. 2, contd. III.—SIR J. SHORE, *June 1789*.

Fifth Report,
page 204.

The variation in the public demands from the standard of Thry-Mull, for a period of one hundred and twenty years, was very small (para. 381).

IV.—COLONEL W. H. SYKES.

Select Commit-
tee, 16th August
1832.
Question 2001.

Under the Native Government in the Deccan, the land tax as such was a fixed tax, known as the *sostee dur*, and it still continues; but in addition there were extra cesses levied upon each *beegah*, or other denomination of land, which rendered nugatory the permanent land-tax, or *sostee dur*. A cultivator paid, for instance, a rupee for a certain quantity of land of a particular denomination. This his ancestors had paid before him; this his neighbours paid around him; this his children would pay after him, because his land, being hereditary, would descend to them. So far as this continued, it was a permanent land-tax, and the same rate is traceable in village papers for 100 years; but there came Governors requiring additional revenue, and they put on an additional cess, calling it by a certain name. This imposition upon the whole village was divided amongst the cultivators proportionably to the land held by each; but it did not affect the land-tax. There came another cess after that, then another and another, each for some specific purpose. In this manner the taxes paid by the cultivator became burdensome, but the original land-tax remained the same.

V.—MR. A. D. CAMPBELL'S "ABLE PAPER ON THE LAND REVENUE."

Commit-
tee, 1832.
Index
6, page 11.

It has already been explained by the Committee of the House of Commons in 1812, that long anterior to the Mahomedan conquest, "through every part of the empire which has come under British dominion, the produce of the land, whether taken in money or in kind, was understood to be shared, *in distinct proportions*, between the cultivator and the Government." This principle is clearly recognised in some of the first enactments of the Bengal Government, confirmed by more recent discussions at that Presidency; and there may thus be distinctly traced only two parties originally connected with the land in India,—the cultivators who paid, and the Government, or its representatives, who received the public dues. These were universally limited by immemorial local usage; but, from the want of correct records of the established rates payable by the cultivators, such usage formed too often an ill-defined, though always an acknowledged, standard.

VI.—SIR C. T. METCALFE, *7th November 1830*.

2, Appendix
p. 83.
page 320.

(a). With respect to the right of property in the soil, I am inclined to believe, as before observed, that it is much the same generally

throughout India, and that it existed in the Ceded Districts as elsewhere, but it is everywhere saddled with the payment of a large portion of the produce to Government, and all right ceases for the time if this be not paid. I speak of the acknowledged law or custom of India, not of any artificial distinctions that our Regulations may have created.

(b). Where, as is frequently, if not generally, the case, the mass of the only persons who can justly be called proprietors are the actual cultivators, and pay rent to no one, unless the share of the produce to which the Government is entitled be so termed,—what is the right of Government on that plan? Is it definite or indefinite? Is it a fixed portion of the supposed rents, or an arbitrary one at the discretion of the assessing officer? Any villager, in any village, throughout India I mean, of course, generally can tell what share of the produce of the land belongs to the Government. This is an acknowledged understood right, differing probably as to amount in different parts, and in the same parts differing according to circumstances, but well-known to all the cultivators as the right or share of the Government, whatever the local usage may be as to amount. If, on the other hand, the question were put as to what share of the rent paid to the proprietor is the right of Government as revenue, I do not believe that it could be answered by any one from the lowest cultivator to the senior member of the Board of Revenue, because such a mode of settling the demand of Government is unknown in the revenue system of India, and has not, as far as I am aware, been established by our Government.

APP. V.

STATE'S DEMAND
FIXED, WITH
ADWABS.

Para. 2, contd.

Ibid. pages
329-30.

VII.—MR. PHILLIPS (QUOTING MR. J. S. MILL).

The mode in which an increased assessment (*adwab*) was obtained, leads Mr. John Stuart Mill to infer, and with reason, that the ryots had customary rights, which could not safely be infringed in any more direct way. * * The passage from Mr. Mill may be usefully quoted here:—

Tagore Lâw
Lectures, pages
177-78.

“In India and other Asiatic communities similarly constituted, the ryots or peasant-farmers are not regarded as tenants-at-will, nor even as tenants by virtue of a lease. In most villages there are, indeed, some ryots on this precarious footing, consisting of those, or of the descendants of those, who have settled in the place at a known and comparatively recent period; but all who are looked upon as descendants or representatives of the original inhabitants, and even many more tenants of ancient date, are thought entitled to retain their land as long as they pay the customary rents. What these customary rents are, or ought to be, has indeed, in most cases, become a matter of obscurity;—usurpation, tyranny, and foreign conquest having, to a great degree, obliterated the evidences of them. But when an old and purely Hindu principality falls under the dominion of the British Government, or the management of its officers, and when the details of the revenue system come to be enquired into, it is usually found that though the demands of the great landholder, the State, have been swelled by rapacity until all limit is practically lost sight of, it has yet been thought necessary to have a distinct name and a separate pretext for each increase of exaction; so that the demand has sometimes come to consist of thirty or forty

APP. V.

STATE'S DEMAND
FIXED, WITH
ABWABS.

Para. 2, contd.

different items in addition to the nominal rent. This circuitous mode of increasing the payments assuredly would not have been resorted to if there had been an acknowledged right in the landlord to increase the rent. Its adoption is a proof that there was once an effective limitation—a real customary rent; and that the understood right of the ryot to the land, so long as he paid rent according to custom, was at some time or other more than nominal.”

VIII.—SIR J. SHORE, *June 1789.*

Fifth Report,
paragraphs
30 to 32.

The principles of Mogul taxation, as far as we can collect from the institutes of Timoor and Akbar, from the ordinations of the emperors, and the conduct of their delegates, however limited in practice, were calculated to give the sovereign a proportion of the advantages arising from extended cultivation and increased population. As these were discovered, the Tumar or standard assessment was augmented; and whatever the justice or policy of the principle might be, the practice in detail has this merit, that it was founded upon a knowledge of real and existing resources. In conformity to these principles, inferior officers were stationed throughout the country to note and register all transactions relating to the soil, its rents and its produce; every augmentation of cultivation was required to be recorded, as well as every diminution of its quantity.

An increase of revenue exacted from a zemindar under these circumstances affected his profits, but made no alteration in the rates upon the ryots; he paid a portion of the rents arising from discovered improvements in his lands, but the cultivators of the soil were not by this demand exposed to an enhancement.

IX.—MINUTE BY MR. STUART, *18th December 1820.*

Selections from
"a
l. III,
n

In Native Governments, a levy on the lands has from time immemorial constituted the chief resource of the State, which has claimed, apparently more as a right of property than as a tax, a share of the whole growing produce of the soil. It is, however, to be understood that this claim of the State was not indefinite and arbitrary, but was exercised, at least in good times and under just rulers, upon fixed and regular principles.

The Government limited its demand to a specific proportion of the produce of the soil, either taken in kind or estimated in money, and varying according to the nature of the land and of the crop and other varying circumstances. Considered, therefore, with relation to any given species of produce and certain portion of the land, the public demand might be said to have been permanent. The invariableness of the rates assured the cultivators a certain reward of their industry, while the unlimited extension of the rates to new lands reclaimed to cultivation, and to the improved produce of lands before under tillage, kept the demand of the State progressive with the wealth and prosperity of the country.

X.—RESOLUTION OF GOVERNMENT, *1st August 1822.*

There is, indeed, reason to believe that, in the best times of the Mahomedan rule, the rate according to which the land revenue was paid and collected were specifically fixed by the Government, being

liable to alteration only on its authority (and that rarely exercised); and that, consequently, in so far as related to a given extent of land under a given description of tillage, the demand of the State and of its officers was, in one sense at least, permanent. Under such a system, sedulously matured and rigidly controlled, the evils incident to the re-adjustment of the jumma assessed on the several mehals might in a considerable degree be obviated, since there was, at least, a fixed and recognized principle by which the amount to be demanded was settled.

APP. V.

STATE'S DEMAND
INCLUDED THE
ZEMINDAR'S
SHARE.

Para. 3.

XI.—SIR J. SHORE, *8th December 1789.*

But the perpetuity of assessment is qualified by Mr. Law by the introduction of a clause, that the proprietors of mokurrary tenures shall be subject to a proportion of a general addition when required by the exigencies of Government. This qualification is, in fact, a subversion of the fundamental principle; for, the exigencies not being defined, a Government may interpret the conditions according to its own sense of them; and the same reasons which suggest an addition to the assessment may perpetuate the enhancement. The explanation given by Mr. Law to this objection is, that temporary extraordinaries must have temporary resources, and even the land at home is liable to a general tax during war, but the land-tax in England does not bear a proportion of 9-10ths to the income of the proprietor. Notwithstanding the explanation, I shall consider the qualifying clause as either nugatory or pernicious, and as standing in direct contradiction to the principle of a mokurrary settlement. The very term implies an unalterable assessment; and if the explanation be founded on necessity, it is decisive against the perpetuity of it.

Fifth report,
paragraphs 29
and 30.

3.—STATE'S DEMAND UNDER THE LAW AND CONSTITUTION OF INDIA IN 1765, INCLUDED THE ZEMINDAR'S SHARE.

I.—PATTON'S PRINCIPLES OF ASIATIC MONARCHIES.

I have thought it necessary to transcribe these passages from the institutes both of Tamerlane and Akbar *verbatim*, that the reader may view the subject exactly as they represent it, from which I think it clearly appears that the *rent* of the land, in all the countries that have been mentioned, is engrossed by Government, and that the property of the land rests between the occupant, who is generally the husbandman or actual labourer of the soil, and the sovereign, all other persons who are mentioned as having any interference in these matters being officers of the Government; either collectors, overseers, or tax-gatherers (another name for collectors), who have the management of the revenues, or military officers of high rank, to whom they are assigned, from the motive, apparently, of combining two transactions into one, allotting the rents immediately for the payment of the troops.

II.—LAW AND CONSTITUTION OF INDIA:

The truth is, that between the sovereign and the rubb-ool-arz¹ (who is properly the cultivator) no one intervenes who is not a servant of the sovereign; and this servant recovers his hire, not out of the pro-

¹ i. e., Lord of the land.

APP. V. duce of the lands over which he is placed, but from the public treasury, as is specially mentioned by every lawyer.

STATE'S DEMAND
INCLUDED THE
ZEMINDAR'S
SHARE.

Para. 3, contd.
Page 36.
Fifth Report.

III.—SIR J. SHORE, *June 1789 (para. 437)*.

The mode by which the demand of Government upon the zemindar was regulated, and that by which the rents of the ryots were collected, are different. Admitting that, in some instances, the ryots paid the taxes imposed by the nazims upon the zemindars, in the same proportions to the assul, and under the same denominations as the zemindars, this was by no means invariably the case: on the contrary, I hold the reverse generally to be true.

IV.—MR. H. COLEBROOKE, 1808.

Bengal Revenue
Selections,
Vol I.,
---- 46.

Mr. Shore (now Lord Teignmouth), whose diligence of research and whose thorough knowledge of the revenues of Bengal are universally acknowledged and need not the tribute of praise, estimated no less than a third of the amount received from the cultivator for the charges of collection and intermediate profit between Government and the ryot. This estimate is quoted and confirmed as corresponding with the experience on the coast of Coromandel by the Board of Revenue at Fort Saint George, in the very able report of that Board, dated 2nd September 1799.

It was with the belief that a third part of the collections made from the cultivator were applicable to the charges of the collection, and the support of the zemindars, that the assessment in Bengal and on the coast of Coromandel was fixed for ever.

V.—MR. RAVENSCROFT, *Collector of Cawnpore, 1st January 1816*.

It appears to be an established principle between the landlord and tenant of the present day, which has probably its origin in the exactions of former Governments, that the rents of land shall amount to half the estimated produce on an average of years, leaving the other half for the support of the husbandmen. The demand of the State, therefore, in rents, would seem to be fixed at this moiety, and is claimed from the landlord, after deducting fifteen per cent., which, from the rules of the territorial assessment, is conferred upon him as a remuneration for his risk and responsibility.

VI.—MR. PHILLIPS.

Tagore Law
Lectures,
pp. 185-6.

It now remains to ascertain the proportion of produce taken by the State as revenue in Muhammadan times. The Fifth Report puts the State proportion at three-fifths in fully settled land, leaving the cultivator two-fifths. Out of the three-fifths taken by the State, the zemindar and village officers had to be paid; that is, the deduction had to be made for muzkooat, including nankar, and amounting theoretically to one-tenth. These deductions, as already pointed out, were to meet the whole cost of collection.

4.—PROPORTION OF THE GOVERNMENT'S SHARE OF THE PRODUCE.

I.—LAND-TAX OF THE ANCIENTS—BRIGGS—

(a)—EGYPT.—The fact of the land-tax in Egypt being usually one-fifth of the produce is proved by the Romans finding it so when they

occupied that country; and in this respect it differed from all other Roman provinces, which only paid one-tenth of the produce. APP. V.

(b)—GREECE.—In this account we may perceive several important facts. First, that the cultivated land paid *one-tenth of the produce* to the State; secondly, that uncultivated lands were used in common as pasturage, but one-tenth of the grazing beasts were made over to the Government, which, in other words, was exacting *one-tenth of the produce* of common pasturages also. GOVERNMENT'S
SHARE OF THE
PRODUCE.
Para. 4, contd.

(c)—ROMANS.—The portion of the crop demanded by the State was almost everywhere confined to *one-tenth of the produce*, and the grain was usually laid up in public magazines, and sold or distributed according to circumstances. One-tenth.

(d)—PERSIA.—At a period anterior to the Muhammadan conquest, the cultivator paid *one-tenth of his produce* to the State, and it will be subsequently shown that the *asherra* (or tenth) is the legitimate land-tax which exists in all Muhammadan countries at the present day. Page 14.
One-tenth.

(e)—CHINA.—The whole of the lands are measured, and not only the extent, but the average rate of produce of each field is inscribed on a public register. One-tenth of the crop is set aside for the State, and the remainder is divided between the cultivator and proprietor, according to agreement. Pages 14-5.
One-tenth.

(f)—COCHIN-CHINA AND SIAM.—The amount of the land-tax is estimated at $\frac{1}{4}$ per cent. of the gross produce, and it is paid by the cultivator, who shares equally with the landowner or proprietor the remainder of the crop. Crown lands, made over to be cultivated by villages, pay one-sixth, or about 17 per cent. of the gross produce, to Government.

(g)—BURMAN EMPIRE.—“The Government impost on cultivated land is only a *tenth part of the produce*, in consequence of which agriculture is carried on with great success, and in a very excellent style.”

(h)—HINDUS.—“Of grain an eighth part, a sixth, or a twelfth, according to the difference of the soil, and the labour necessary to cultivate it.” * * The tax on the mercantile class, which in times of prosperity must only be a twelfth part of their crops, and a fiftieth part of their personal profits, may be an eighth of their crops in a time of distress, or a sixth, which is the medium; or even a fourth, in great public adversity. Pages 31, 32 & 3

In the time of Alexander “the cultivators in India contributed a fourth part of their crops to the sovereign; and as long as the husbandman continued to pay the Government dues, the land occupied by him descended from generation to generation like private property.” The fourth part alluded to was the war tax, which Porus, and those Indian princes who opposed Alexander, had a right to levy according to the law.

Of the rate of taxation so general among the Hindus, it is curious to find a proof in the pages of a Mahomedan historian. One of the earliest acts of the first Mussulman King of Cashmere, in the A. D. 1326, was “to confirm for ever the ancient land-tax, which amounted to seventeen per cent., or about one-sixth of the produce of the land.”

APP. V. II.—HINDU GOVERNMENT—

GOVERNMENT'S
SHARE OF THE
PRODUCE.Para. 1, *contd.*Halhed, page
128.I
Tagore Law
Lectures, page 5.
Ayeen Akbary,
page 299.Harrington's
Analysis, page 5.

a.—The Hindu system estimated the rates at a sixth or an eighth (or in times of prosperity one-twelfth) according to the quality of the soil and the expense and labour of tilling it; in extreme cases of urgent necessity a fourth might be demanded, but pending the existence of the necessity which legalises it.

b.—In former times, the monarchs of Hindustan exacted the sixth of the produce of the lands; in the Turkish Empire, the husbandman paid the fifth; in Turan, the sixth; and in Iran, the tenth. But at the same time there was levied a general poll-tax, which was called *kheraj*.

c.—The natives whom I have consulted on this point, affirm that the ancient rajahs exacted a sixth proportion of the produce of the lands, which the possessors were authorised to sell or alienate, subject to the sovereign's claim for rent (*Sir J. Shore, 2nd April 1785*).

III.—MAHOMEDAN RULE—

Law and
Constitution of
India.

Page 97.

Half produce
the maximum.

Page 98.

(a).—By the Mahomedan revenue laws, a distinction is made between the Moslem and the non-Moslem or *Zimmeer*, to which it is necessary to attend. This distinction, however, is applicable only to the land of *Arabia Proper*, and to conquered provinces when the lands are divided among the conquerors. There the Moslem pays the *ooshr* or tithe of his crop; the *Zimmeer* the heavier impost of *khurauj*, which by law may amount to, but cannot exceed, half the produce, *i. e.*, five tithes. But, on the other hand, the Moslem is liable to several annual and occasional taxes from which the *Zimmeer* is exempt, amounting to about two or three per cent. of his property (not of his produce merely) under the name of *sudukah* and *zukah*, or pious benevolences.

2. The whole land of India, however, is *khiranjee* land, and by law the *ooshr* and *khurauj* cannot both be exacted from the same land; consequently, in India the land revenue payable by a Moslem and a *Zimmeer* by law would be the same, and so *de facto* it was.

By the institutes of Timour, "the *khurauj* is to be settled according to the produce of the *cultivated* land. The lands irrigated by water constantly flowing should pay one-third, if only by rain water, therefore uncertain, to pay one-third or one-fourth. The land should be measured and divided into three classes, an average taken, and to pay so much."

4. The *khurauj* was fixed in two ways: one on the principle of a share in the produce, as a half (the highest), or a third, or a fifth; the last considered as the lowest extreme. This settlement was termed *mookausumah*, from *kismut*, division, *i. e.*, the cultivator dividing the produce with the State. The principle of this settlement, therefore, is similar to tithing, the rate only is higher; and in this settlement, if there was no cultivation, there was no collection.

5. The other mode of fixing the *khurauj* (which was the radical mode, so that if the word *khurauj* simply is used, it is held to mean this mode of settlement) had reference to the quantity of cultivated land possessed, and the kind of crop produced. The rate of *khurauj* was fixed for the different kinds of crop the land was capable of producing. The land was measured, and each *jureeb* (or, as it is called in India,

beegah) of sixty squares of nearly yards, if it produced wheat, paid a measure of wheat and a dirhum in money. Other dry crops paid also in kind and in money per jureeb; but all green and perishable crops paid in money only. This mode of settlement was called *mookautuah* from *kutoa* to cut or settle definitely. Thus certain lands produce a certain crop. The quantity of the land is known by measurement; the rate is fixed; consequently the quantum of revenue is fixed. By the former, or *mookasumeh* settlement, the quantity of revenue was not fixed, but depended on the harvest and on the cultivation. The *khurauj* was leviable under the *mookautuah* settlement, whether the owner cultivated or not; provided he was not prevented from doing so by some inevitable calamity as inundation, blast, blight; or if he was deprived of his field by force, he was not liable.

6. It appears that before the time of Shere Khan, the *mookausumah* settlement prevailed in Hindustan. The *Ayeen Akbari* says: "Sher Khan and Selim Khan, who abolished the custom of dividing the crop and measurement of the cultivated lands, used this *guz*" of thirty-two fingers. And Akbar seems to have restored the *mookhausumah* settlement, with conversion into money of the Government share, in some of the provinces. Of the fifteen soubahs which composed his empire, *ten* were measured. The remaining *five* soubahs were not measured; but the revenue was settled by *ussuk* or computation, and valuation of the crop before the harvest, and was paid in money. This was the custom in Bengal.

7. The soubahs not measured were Cashmere or Cabul, Tatta, Berar, Khandeish, and Bengal; those measured were Behar (part at least), Allahabad, Oudh, Agra, Malwah, Guzerat, Ajmeer, Delhi, Lahore, and Mooltan. The measurement of the cultivated lands thus made, and the ascertainment of the average produce of a beegah, were the data on which the assessment was formed. One-third of the average produce was fixed as the revenue, but in case of inundation, or other unavoidable calamity, the impost was less for the first four years following it. On the above basis, taking the average of ten years, Akbar made a decennial *mookatuah*, or permanent rate settlement, which is stated to have given great satisfaction to the people. It was done under the superintendence of Rajah Tudar Mull and Muzaffur Khan. It is the settlement so often alluded to by writers on this question, and the amount is known by the name of the *ussul toomar jumma*, established A. D. 1582.

8. The Mahomedan law, as I have observed, allows the *khurauj* to be levied as high as one-half. Some lawyers say, as much shall be left to the husbandman as will maintain his family, servants, and cattle till next crop, and all the remainder shall go to the crown; but one-fifth of the produce is deemed the equitable and commendable portion, being double the *oosher* or double tithe. The *Ayeen Akbaree* says, "former rulers of Hindustan took one-sixth, but then they imposed a variety of other imposts, equal to the whole quit-rent of Hindustan, which Akbar abolished; among these, the capitation tax."

(b). BAILLIE ON THE LAND-TAX OF INDIA.—

1. The *khiraj* imposed by the Khaleef Omar on the Sowad of Irak, Page XV. (that is, the *wazeefah khiraj*, in all countries of *khirajee* land, such as

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contd.

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e XVII.

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XVII.

India) seems to have been founded on an assumed equality in the capabilities of the soil, and to have been regulated solely by the degree of labour required for obtaining its measure, of which the different kinds of produce were taken as the tests or criteria, thus (1) on a *jureeb* or area of 60 by 60 jiras of grain, the rate imposed being partly in kind and partly in money, was a *kufeez* and a *dirhem*. (2) On the same extent of vegetables or plants whose roots remain in the ground for several years, the rate imposed was five *dirhems* in money: and on a similar quantity of land planted with vine and date trees, which are calculated to endure for many years, the rate imposed was ten *dirhems*. It does not appear that at the time when Omar made his assessment there were any other kinds of produce than the three descriptions above mentioned. But (4) saffron is particularly specified in the *Hidayat* and other authorities as not being included; and gardens or pleasure grounds, where the fruit trees are too widely dispersed to allow of their being classed with vineyards or date orchards, are also noticed as being different from any of the descriptions mentioned. In cases of this kind, which may be considered as omissions from the *wazeefa* of Omar, and beyond the authority of his example, a *khiraj*, which is some proportionate share of the produce, as a fourth or a fifth, was imposed. This, as seems, was the origin of the *mookassimah khiraj*.

2. The rate of the *mookassimah* is left within a certain limit to the discretion of the Imam, and may be any part of the produce that the land will bear, not exceeding the half, which is considered the extreme capability. The *wazeefa* is restricted to the rates established by Omar. No higher rate could lawfully be imposed, in the first instance, by any of his successors, on whom it appears that his example was imperative. Nor can a rate once imposed be afterwards lawfully increased without the consent of the people, except perhaps in one case, which seems to be of rather doubtful authority; nor a *wazeefa* changed to a *mookassimah* nor a *mookassimah* to a *wazeefa* without their consent.

3. The *wazeefa* was calculated in three rates, which, according to the *Inayah*, were a maximum or *minimum*, and something intermediate. If we suppose, as seems probable, that the last was a geometric mean between the two others, the *minimum* would be $2\frac{1}{2}$ *dirhems* as the value of a *kufeez* and *dirhem*, or the *wazeefa* on a *jureeb* of arable land. Ten *dirhems* in the time of Aurungzebe were equivalent to $2\frac{3}{4}$ rupees; and, on the authority of the *Ayeen Akbery*, a *jureeb* is the Indian beegah, of which about three are equal to an English acre. So that the *wazeefa* on arable land, assuming it at $2\frac{1}{2}$ *dirhems*, would be about 11 annas the beegah, or taking the sicca rupee at 2s. 6d., which is the highest exchange it has borne for any length of time, and is probably a good deal more than its intrinsic value, about 5s. the English acre.

4. The *wazeefa*, as already observed, was calculated on an assumed equality of soils. But this can be assumed only under equal facilities in relation to water. In many countries of the East rain seldom falls, and little dependence can be placed on a constant supply of water where land is beyond the influence of the great rivers, or canals connected with them. In such circumstances, a *wazeefa* after the rates of Omar, or any *wazeefa*, that is, any fixed rate calculated on the capability of the soil, would be impossible. If imposed, it could not be borne, and the people,

rather than submit to it, would abandon their lands. For such circumstances the *mookassima* is well adapted, as its rate admits of adjustment to the varying fertility of the soil, and is due only out of actual produce. For these reasons it is probable that in extensive countries, like Persia and India, where there are great varieties of soil, a *khiraj* of the *mookassima* kind was largely imposed on all but the alluvial lands within the influence of the large rivers. On these the *khiraj* would more properly be the *wuzeefta*. The *wuzeefta* was at first no doubt more onerous in its amount, as well as in other respects, than the *mookassima*, but its amount being fixed, while that of the *mookassima* was liable to increase up to a half of the produce, improvements in agriculture and a diminution in the value of money would gradually alter the relations of each to the other, until at length the *wuzeefta* would become less burdensome than the *mookassima*. The *wuzeefta* would thus admit of the gradual rise of a class of proprietors between the Government and the mere cultivators. Under the *mookassima*, the proprietors would more likely be kept down by successive increases of the rate of *khiraj* to the condition of cultivators.

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contd.

5. The greatest difference between the systems of Omar and Akbar was in the rate; but here the difference was more apparent than real; for though the rate of Omar varied according to three different kinds of produce, and the rate fixed by Akbar was the same for all produce, yet the different kinds specified by Akbar, though so many as eleven are mentioned for the spring harvest, and nineteen for the autumn, are all comprised within the first class of Omar; his other two classes, *viz.*, *rootbut* and *kirm* (or vegetables and vineyards) being entirely omitted by Akbar, probably because they were not required in the state of agriculture in India. The rate fixed by Omar on all articles falling within his first class was a *kufeez*, by measure, of the article itself, whatever it might be, and a *dirhem* in money; but it may be presumed that this rate was not fixed arbitrarily, but bore some ratio to the average produce of the land. The rate fixed by Akbar was a third part of the average produce of each article on land of average quality; and he took great pains to ascertain this average correctly. This rate may have been somewhat higher than that of Omar, for it is probable that it comprehended some compensation for the *jizyut*, or poll tax, which, with many other vexatious exactions, were remitted by Akbar. The rate being thus fixed was commuted into money at the average prices of nineteen years; and it was left to the option of the cultivator to pay in kind or in money, that is, the fixed average third of the particular produce or its fixed average price. In all this there is not a trace of the *mookassima*; the *khiraj* was wholly *wuzeefta*. The settlement was made for ten years. Whether it was continued beyond this period, or how far it entered into the arrangements of his successors, I am unable to say. As the *jizyut* was soon reverted to (though not by Akbar), it would probably be found too high.

(c). MR. PHILLIPS—*Tagore Law Lectures, 1874-75.*

The *wuzeefta khiraj* depending upon the capability of the soil, and being independent of its actual cultivation, closely resembled in these respects the tax paid by the khodkhasts under the Hindu system.

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APP. V. (a). FIFTH REPORT, COMMITTEE.

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PRODUCE.

a. 1, III,
id.

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The rule for fixing the Government share of the crop is traceable, as a general principle, through every part of the empire which has yet come under the British dominion, and undoubtedly had its origin in times anterior to the entry of the Mahomedans into India. By this rule, the produce of the land, whether taken in kind or estimated in money, was understood to be shared in distinct proportions between the cultivator and the Government. The shares varied when the land was recently cleared and required extraordinary labour; but when it was fully settled and productive, the cultivator had about two-fifths, and the Government the remainder. The Government share was again divided with the zemindars and village officers, &c.

(c). FIFTH REPORT, APPENDICES.

re 252.

(1). As the rights of sovereignty were originally established at one-fourth of the gross produce of the land shared with the ryots; did from the beginning, do actually, and must ever, from necessity or policy, continue to be rated formally at the same equitable standard, it appears highly expedient for Government to realize its pretensions virtually, to such proportion (*Grant's Analysis of the finances of Bengal*).

2. SIR J. SHORE, June 1759.

I assume as facts, the ryots to pay in a proportion of one-half of the gross produce of their lands: the charges of collection, *viz.*, those only paid by the zemindars, farmers and other gradations of landholders and renters, to be 15 per cent. on this amount: and the intermediate profits between the Government and the ryots to be 35 per cent. more (paragraph 109).

3. IBID (*Same Minute*).

I believe that the ryots in Bengal are generally taxed in a proportion of one-half¹ the produce of their labour; and we must therefore admit that the assessment with respect to them is fully as much as it ought to be supposing it to be even one-third (paragraph 145).

4. *Same Minute*.

By the institutes of Akbar, we are informed that when, from motives of justice and humanity, the emperor ordered a settlement of the country to be made for ten years, he began by directing a measurement of the lands, and by fixing the rates of them, according to their qualities and produce. The proportion which he claimed for the State was one-third of the medium produce (paragraph 217).

Eventually, however, Akbar abandoned an assessment based on a fixed proportion of the produce, and substituted a revised assessment, based on actual collections: see this section, IIIk.

¹ *i. e.*, including the 15 per cent. for charges of collection, section 2, above.

5. SIR J. SHORE, *Minute 8th December 1769.*

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The proportion paid by the cultivators of the soil may be reckoned at a half, or it may be nearer perhaps to three-fifths of the gross produce. Taking this at 100 parts, the claims of the Government may be estimated at 45. The zemindars and under-renters may be supposed to have 15, and 40 remains with the cultivators of the soil. In the two last classes some enjoy considerably more than the assigned proportion: others, again, less.

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PRODUCE.

Para. I, III,
contd.

SIR T. MUNRO, *15th August 1807.*

6. The assessment of Akbar is estimated by Abul Fazil at one-third, and by other authorities at one-fourth of the gross produce; but it was undoubtedly higher than either of these rates, for had it not been so, enough would have remained to the ryot, after defraying all expenses, to render the land private property; and as this did not take place, we may be certain that the nominal one-third or one-fourth was nearly one-half. This seems to have been the opinion of Aurungzebe, for he directs that not more than one-half of the crop shall be taken from the ryot; that where the crop has suffered injury, such remission shall be made as may leave him one-half of what the crop might have been; and that when one ryot dies and another occupies his land, the rent should be reduced if more than one-half of the produce, and raised if less than a third. It is evident, therefore, that Aurungzebe thought that one-half was in general enough for the ryot, and that he ought in no case to have above two-thirds. The mode of assessment in the Ceded Districts and in the Deccan still limits the share of the ryots to those proportions, but makes it commonly much nearer to one-half than two-thirds of the produce. * * As, therefore, one-third of the produce is the highest point to which assessment can in general be carried without destroying private landed property, and as it is also the point to which it must be lowered before persons who are not cultivators can occupy circar land without loss, it is obvious that, unless the assessment is reduced to this rate, land can neither be occupied by all classes of the inhabitants, nor ever become private property. I am therefore of opinion that in a permanent settlement of the Ceded Districts, the rent of Government should be about one-third of the gross produce. The present assessment is about 45 per cent.

(f). *Tagore Law Lectures, 1874-75.*

Sir George Campbell says, the State, before British rule, took from one-fourth to one-half of the gross produce, one-third and two-fifths being the most common proportions. The Fifth Report puts the State proportion at three-fifths in fully settled land, leaving the cultivator two-fifths. Out of the three-fifths taken by the State, the zemindar and village officers had to be paid, that is, the deduction had to be made for muzkoorat, including nankar, and amounting theoretically to one-tenth. These deductions, as already pointed out, were to meet the whole cost of collection. Mr. Shore gives two different opinions: his earlier opinion is that Government took one-third; but his later opinion puts the Government share at from one-half to three-fifths.

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lume III,
se 216.

Mr. Elphinstone says that one-third is a moderate assessment, and that the full share is one-half. Mr. Grant says the proportion taken was one-fourth, which he considers moderate.

(g). According to the rules of the territorial assessment decreed by Akbar, the two kinds of land called *poolj* (cultivated) and *parowly* (fallow) were thrown into three classes, viz., best, middling, and bad. The produce of a beegah of each sort was added together, and a third of the aggregate sum taken as the medium produce of a beegah of cultivated or *poolj* land, one-third part of which was the revenue settled by that emperor. Previously to this period, Noorsherwan, who, for the purpose of ascertaining an equitable fixed revenue, made a measurement of all the arable land in his empire, determined that the third of the produce of a land measure of sixty square kissery guz or yards should be the proportion of revenue.

(h). MR. STUART'S MINUTE, 18th December 1830.

id., page 217.

I apprehend that the principle of levying upon the gross produce is often corrected by varying the rate according to the descriptions of land and cultivation, and that it does not extend to the more artificial and costly kinds of culture, a fixed monied payment upon which almost invariably obtains.

(i). MR. J. MILL, 9th August 1831.

d Report,
lect Com-
ittee, 1831.

Q. 3438.—Is it not the fact that throughout that part of India where the land revenue is variable, it is commonly assumed that one-half of the gross produce is taken from the ryot, and that the greater proportion of that, namely, about 35 per cent. of it, is assumed as the share of Government?—Certainly not.

Q. 3439.—Is it not so under the Madras Presidency?—At Madras the sort of rule assumed by Sir Thomas Munro, and I should say erroneously, was, that one-third of the produce might generally be demanded by Government.

Q. 3440.—Was not that upon a very high assessment?—He over-estimated the productive power of the soil, and upon a revision, directed that 25 per cent. should be diminished from it.

Q. 3441.—Was his original estimate in any case realised?—I should not say that it was in no case realised; I believe it was realised to a considerable degree for some years, but with a deterioration of the country.

Q. 3442.—Was the reduction made that he proposed?—It was; and even additional reductions in many cases have been found necessary, and have been directed.

(j). MR. H. STARK (*Chief of the Revenue Department in the India Board, 14th February 1832*).

Sessions,
1831-32, Vol. XI.

Q. 225.—The Committee have been informed that at the original settlement in 1793, it was regulated that the value of one-half the gross produce of the land should be reserved to the Government, and the other half reserved to the ryot, a portion of one-tenth only for the zemindar; if that distribution was correctly made at the time of the

original settlement taking place, in what way can so large an increase of value have arisen as to enable those intermediate holders to grow up? —I am of opinion that the calculations that the Committee have received of the divisions of crops, as between the Government and the cultivators before 1793, are mere estimates. There was never, I believe, in Bengal, any actual division of crops between the ryots and Government; but the supposed quantity belonging to Government was thrown into money, and that was the assessment upon the village. The cultivators were decidedly interested in keeping the Government share as low as they possibly could; and if the village officer and the cultivators succeeded in deceiving the European and native collectors employed in settling the revenue, the money-payment would not amount probably to a third of the produce. In some districts of the Madras territories, where they realise the revenue very much in that way still, by what is termed an *amauny* division of the crops, the complaint of the collectors is, that they are deceived by their native officers, who combine with the ryots in deceiving the Government. Of course, if a ryot gains 20 per cent. by bribing the *amauny* officers, he may reserve a clear gain of 15 per cent. to himself.

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contd.

Q. 226.—Is it your opinion that those were very much undervalued? —Yes.

Q. 227.—And that the amount reserved to the zemindar was never so much as it ought to have been?—It could not have amounted to half the crop as a general rate.

(k). BRIGGS.

(1). When his majesty (Akbar) had settled the length of the *guz* (standard rod), and the *tincul* (the chain), and the dimensions of the *beegah* (superficies), he classed the lands, and fixed a different tax on each, viz.,—

Pooluj is that land which never lies fallow for a whole season.

Pirowty is that land which is allowed to lie fallow to recover itself after exhaustion.

Checkur is that land which has lain fallow for two or three years.

Bunjar is land that has been left uncultivated for five or more years.

Pooluj and *pirowty* lands are of three sorts, viz., best, middling, and worst. They add together a beegah of each sort, and a third of that aggregate is assumed as the average produce, one-third part of which is the revenue settled by his majesty. *Pirowty* land, when cultivated, pays the same revenue as *pooluj*.

The estimate is made in kind, and Akbar particularly enjoins his revenue officers to receive the produce itself, if the husbandman objects to the commutation price.

(2). At a very early period, after Akbar's decennial settlement, his scheme to assess fields was discovered, in practice, to be full of embarrassment; and, before his measurements even were completed, he was reduced to the necessity of assessing whole villages, and leaving it to the people themselves to distribute the portion payable by individuals.

This is one of the most instructive lessons we could have of the extreme difficulty of assessing land in any portion which approaches to the full profit of the landlord. The actual measurement, and the

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contd.

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nominal assessments of Akbar, exist at the present day in the village records of those countries wherein they were introduced; but they may be deemed rather objects of curiosity than of utility. The village assessment of Akbar was adopted by his son Jehangier, and his grandson Shahjehan; and the European travellers who visited India in those days speak of the extraordinary prosperity and wealth of the country.

Aurangzebe abandoned the plan of Akbar, and reverted to that system, which has been before explained, in the times of Alla-oodden Khiljy, where the king claimed an equal division of the crop with the cultivator, as is related by Khafia Khan, a contemporary historian. This practice, however, was by no means universal; the proportion varied according to the nature of the land and of the crops. Thus, sugarcane, opium, ginger, and whatsoever produce required the extra labour of watering from wells, only paid one-fourth, if paid in specie; and one-third, if received in kind;—more expensive crops than these paid only one-eighth of the produce.

(3). Mr. Grant, in his history of the Northern Circars, “distinctly states that in the reign of Akbar there was a definite limit to the land-tax imposed in Delhi, Agra, Guzerat, Malwa and Behar, which he asserts was one-third of the produce payable in kind, but if converted into money, was to be received at one-fourth of the average market price. This law was instituted, as we have seen, in the latter end of the sixteenth century, and we perceive it is exactly double that which the Hindu law (according to the Ayeen Akbarry) and the institutes of Menu authorised to be taken.”

(2). COLEBROOKE : HUSBANDRY OF BENGAL.

(1). In the rule for dividing the crop, whether under special engagements, or by custom, three proportions are known :—

Half for the landlord.	Half for the tenant.
One-third ditto.	Two-thirds ditto.
Two-fifths ditto.	Three-fifths ditto.

These rates, and others less common, are all subject to taxes and deductions similar to those of other tenures; and, in consequence, another proportion, engrafted on equal partition, has in some places been fixed by Government in lieu of all taxes, such, for example, as nine-sixteenths for the landlord and seven-sixteenths for the husbandman.

(2). Under Akbar, the revenue was settled at a third of the produce of lands cultivated for every harvest, or opened after allowing a short lay, in order that the soil might recover its strength; but for older fallows, much less was required. For example, if the land had been untilled during three or four years and was greatly injured, the payment in the first year was two-fifths of the standard, or two-fifteenths of the produce; in the second year three fifths of the standard; in the third and fourth years four-fifths; and in the fifth year the same rate as for land regularly cultivated. The rent of ground which had been waste was in the first and second years inconsiderable; in the third year, a sixth of the produce; in the fourth year a quarter of it; and, after that period, the same as for the land which had been regularly cultivated. These rates were applicable to corn only. Indigo, poppy, &c., were paid for

in ready money, at proportionate rates. *Vide* Ayeen Akbarry, vol. pages 356, 361 and 364.

(m). MR. R. D. MANGLES, *31st March 1848*.

In the provinces not permanently settled, the Government tak from 65 to 75 per cent. of the rental which the landlord gets from h tenants (Q 3331-2).

(n). SESSIONS, 1857, VOL. 29.

The rate of land tax in Bengal cannot be given, but it is believed amount on the average to about half the rental. In the North-Western Provinces, the tax is half the average net assets, *i. e.*, of the surplus after deducting the expenses of cultivation, including the profits of stock and wages of labour.

5. The Government's fixed proportion is a maximum, and is nominal.

I. HARRINGTON'S ANALYSIS OF THE REGULATIONS.

It may, however, be proper to advert to a custom subsisting in Jessore, *viz.*, that the nominal rate of land is three rupees per beega, but that the real rate is only one, as the ryots possess fifteen beegals where their pottahs state five only, and upon the last quantity, the assessment of three rupees for each is made.

II. MR. J. MILL, *9th August 1831*.

Q. 3444.—Can you point out the part of India in which, in your apprehension, a larger amount is taken from the cultivator than that which he is able, with comfort, to pay? It is not easy to answer that question in regard to any large portions of the country; in the same district, and under the same collector, more than the rent may be taken in one case and less in another, anything like accuracy on the point we have no means of attaining, and one source of deception, and that a very natural one, to the collectors, in estimating the lands, is this, that in many villages they found the lands rated at a certain amount, that in those cases it was paid, and without difficulty or complaints. This was assumed for the different classes of land as a species of standard, and all the land was rated at this standard; but in reality it was not, and the ryots had been enabled to pay so high a rate only for a small portion of land, in addition to what they had never brought to account. Our vigilance being that of the government which went before us, a portion of this concealed land was allowed to remain in the operation of detecting the unassessed land, and gradually, as the assessment, it was found after a certain time, at the moment it was so discovered, a remission took place.

Q. 3445.—Of what part of the country are you aware has happened in all parts of the country not permanently settled?

6. In England a proprietor of land who is generally supposed to receive as rent a value equal to the gross produce; this proportion will vary in different circumstances.—(*Wilks' Mysore, page 109*.)

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 Para. 8.

6. Summing up the salient points brought out in this Appendix, it appears that—

Under the law and constitution of India the right of the sovereign was limited to a share of the produce of the soil. The sovereign—that is, the State—was not the proprietor of the land.

II. Among the ancients, the State's demand on the land was fixed, and its share of the gross produce varied from one-tenth to one-fifth. In India, after the Mahomedan conquest, the State's share was in a higher proportion, but still the ordinary demand was fixed.

III. It was fixed at a certain proportion of the produce, varying with the kind of produce; and it was greater when the State's share was taken in kind than when it was taken in money. Its incidence was further moderated by the cultivator's occupancy of more land than the area on which assessment was paid.

IV. The proportion forming the State's share included the zemindar's allowance from the State, and it was a maximum, below which it varied in different districts according to custom, but on principles which were so well understood, that the cultivators could readily tell the proper assessment for a particular field.

V. The State's share (which included the zemindar's share) of the produce of the land being thus fixed, even under native rule, the remainder of the produce did not belong to Government, who, accordingly, had not the power to give it away to the zemindar. The amiable and benevolent authors of the permanent settlement did not contemplate spoliation of the property of millions of ryots, but merely the giving away of what belonged to the Government; on the contrary, they contemplated the fixing of the demand upon the ryot as permanently as the Government's demand upon the zemindar (para. 2, sections VIII and XI). Accordingly, the transfer by the Government to the zemindar of property in its share of the produce did not confer on the zemindar any property in the ryot's share, which was outside the Government's fixed proportion of the produce.

VI. Besides the fixed ordinary demand thus ascertained, the cultivators were subject to payment of *abwabs*, or temporary cesses, which, in theory, were leviable only on the pretext of extraordinary expenses or emergencies of the State. These *abwabs*, thus, were of the nature of State taxes,

not of cesses, such as a private landed proprietor might exact on a strained interpretation of rights, or by an arbitrary exercise of power. Accordingly the Government, in transferring to the zemindar its fixed share of the produce, prohibited, in the proclamation of the permanent settlement, the levy of fresh *abwabs* by the zemindar.

VII. The original assessment of Akbar broke down because he had based it on a fixed proportion of the produce. His revised assessment, or that of Toodur Mull, was based on actual collections, which were distributed, downwards, to pergunnahs, villages, and holdings, thus furnishing a fixed amount of assessment in money, which was not liable to increase from a rise of prices. In the subsequent revision of assessment the increase on the previous demand was from an increase of cultivation, not of rates of rent (para. 2, sections VIII and IX).

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Para. 6, contd

APPENDIX VI.

ZEMINDARS BEFORE THE PERMANENT SETTLEMENT.

APP. IV. 1.—DEFINITION OF ZEMINDARS.

DEFINITION OF
ZEMINDARS.

I.—LAW AND CONSTITUTION OF INDIA.

Para. 1.
Page 27.

The word *zemindar*, generally rendered *landholder*, is a relative and indefinite term; and does no more necessarily signify an owner of land than the word *poddar* signifies an owner of money under his charge; or an *ambdar*, the proprietor of the water he serves up to his master; or a *soobadar*, the owner of the province he governs, or, in military language, the owner of the company of sepoys he belongs to; or *kellandar*, the proprietor of the fort he defends; or *thanadar*, the owner of the police post he has charge of. On the contrary, I might venture to assert that the affix *dar*, according to the idiom of the Persian language, has more of a *temporary* meaning; it imports more an official or professional connexion between the person and thing connected, than a real right in the former to the latter; as *foujdar*, though the *fouj*, or troops, are the king's; *tehseldar*, though the rents collected belong to the Government; *amildar*, though he acts for Government; *beldar*, *talldar*, though the *spade* or *axe* is the property of the master. I say the word *zemindar* imports nothing more, *necessarily*, than that a relation exists between the *person* and the *zumeen*, or land. What that relation is, forms part of the subject to be discussed.

II.—SELECT COMMITTEE, 1812.

Fifth Report,
pages 80-81.

(a). The duty of the zemindar, as declared in his *sunnud* of appointment, was to superintend that portion of country committed to his charge, to do justice to the ryots or peasants, to furnish them with the necessary advances for cultivation, and to collect the rent of Government, and, as a compensation for the discharge of this duty, he enjoyed, as did the zemindars of Bengal, certain allotments of land rent-free, termed *saverum*, which were conveniently dispersed¹ through the district, so as to make his presence necessary everywhere, in order to give the greater effect to his superintendence.

(b). He was also entitled to receive certain *russooms*, or fees on the crops, and other perquisites, drawn from the sayer or customs, and from the quit-rents of houses. These personal or rather official lands and perquisites, amounted altogether to about ten per cent. on the collections he made in his district or zemindary.

¹ This convenient dispersion of the zemindary lands through the district denotes the encroachment by the zemindar on, or his appropriation of, the lands of the village headmen or *mocuddums*.

(c). The office itself was to be traced as far back as the time of the Hindu rajahs. It originally went by the name of *chowdrie*, which was changed by the Mahomedans for that of *erorie*, in consequence of an arrangement by which the land was so divided among the collectors, that each had the charge of a portion of country yielding about a crore of *dams*, or two and a half lakhs of rupees. It was not until a late period of the Mahomedan Government that the term *erorie* was superseded by that of *zemindar*, which, literally signifying a possessor¹ of land, gave a colour to that misconstruction of their tenure which assigned to them an hereditary right to the soil.

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Para. 2.

2. That the zemindar's was an office, and not a property in all the land in the zemindary, is illustrated by various incidents of the title, or in the treatment, of the zemindars. Thus—

I.—LIABILITY TO DISMISSAL.

(a). In the *proclamation, dated 11th May 1772*, by which the Court of Directors—

Colebrooke's
Supplement,
page 180.

“divested the Nabob Mahomed Rezah Khan of his station of Naib Dewan, and determined to stand forth publicly themselves in the character of Dewan,”

a list was published—

“of the several branches of business appertaining to the Dewanee,”

and the seventh item in the list was—

“the constitution and dismissing of zemindars, with the concurrence of the Nazim.”

(b). PATTON'S ASIATIC MONARCHIES.

The removal of the whole of the zemindars in Bengal from their offices, by JAFFIER KHAN, the subadar, under the government of *Aurangzebe*, when all the powers of the empire were in their vigour, and when, of course, the sanction of Government attended the measure, is at once the most ample confirmation. That this removal was conformable to the rules laid down by that Emperor, appears from another firmaun which he issued, preserved in the *Remayat Aleemgeri*, which is considered as authentic. (Here follows an extract enjoining that if an “*aumeen, aumil, chowdry* (the same as *zemindar*), or *canoongoe*” be guilty of exactions, “and should not be restrained by punishment and coercive measures, write an account thereof to our presence, that he may be *dismissed from his office*, and another appointed in his room;” and again in the 12th article, “if any *ameen, crory* or *pottadar* * * acts contrariwise, intimate the particulars to our presence, that he may be discharged from his office, called to an account, and meet with the punishment due to his merits.”

Pages 167 and
54.

¹ Holder; the holder, unlike an owner, can hold for another.

APP. VI. II.—EXCLUSION OF INCOMPETENT ZEMINDARS—

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WAS AN OFFICE.

(a). SIR J. SHORE, *June 1789*.

Para. 2, contd.

Fifth Report,
page 200, paras.
315 and 319.

It was observed at the time of this reference that the orders of the Court of Directors prescribed that the settlement should in all practicable instances be made with the zemindars; but that as many of them are disqualified from any real interference in the management of the collections, from incapacity on account of *age, sex, minority, lunacy, contumacy, or notorious profligacy of character*, there should, in such cases, be appointed a near and respectable relative by way of guardian or dewan, before any temporary farmer or servant of Government.

III.—DISQUALIFIED TO TRANSFER OR SELL WITHOUT THE SANCTION OF GOVERNMENT.

(a). COURT OF DIRECTORS, *12th April 1786, para. 33*.

Select Committee,
1810, Appendix
No. 12.

Besides, if the policy of all nations has circumscribed within cautious limits the transfer of all landed property, it is far more necessary to do so in Bengal, where so large a proportion of the land rents has always appertained to the sovereign, and where, under the most liberal construction of a zemindary title, no alienation could be valid unless it were recognised and ratified by a new grant of the sovereign or his viceroy.

(b). LORD CORNWALLIS, *3rd February 1820*.

Fifth Report,
page 485.

To keep them in a state of tutelage, and to prohibit them from borrowing money, or disposing of their lands, without the knowledge of Government, as we do at present, with a view to prevent them from suffering the consequences of their profligacy and incapacity, will perpetuate these defects.

IV.—THE LARGENESS OF ZEMINDARIES WAS A DISPROOF OF PROPRIETARY RIGHT.

(a). COURT OF DIRECTORS, *19th September 1792, para. 26*.

Select Committee,
1810, Appendix
No. 12.

Indeed, the facility with which annexations appear to have been made to zemindaries, and the magnitude to which some of these have been swelled, even by the originating acts of the Native Government itself, must be admitted to furnish some presumptive argument against the notion of strict proprietary title. In those annexations there seems to have been always implied the existence of a despotic principle, which left everything subject to new modification at its pleasure; and on this account the circumstance, which probably gave rise to these extensive possessions, made them less an object of jealousy to Government. But under the Company's Government the case has been different. The impolicy of these extensive territorial possessions and jurisdictions, even in the loose form in which they have hitherto been held, has not passed unnoticed.

(b). WARREN HASTINGS' REVIEW OF THE STATE OF BENGAL, 1786.

APP. V

The public in England have of late years adopted very high ideas of the rights of zemindars in Hindustan; and the prevailing prejudice has considered every occasional dispossession of a zemindar from the management of his lands as an act of oppression. I mean not here to enter into any discussion of their rights, or to distinguish between right, fact, and form as applied to their situation. Our Government, on grounds which more minute scrutiny may, perhaps, find at variance with facts, has admitted the opinion of their rightful proprietorship of the lands. I do not mean to contest their right of inheritance to the lands, whilst I assert the right of Government to the produce thereof. The Mahomedan rulers continually exercised, with a severity unknown to the British administration in Bengal, the power of dispossessing the zemindars on any failure in the payment of their rents, not only *pro tempore*, but in perpetuity. The fact is notorious; but lest proof of it should be required, I shall select one instance out of many that might be produced; and only mention that the zemindary of Rajshahye, the second in rank in Bengal, and yielding an annual revenue of about 25 lakhs of rupees, has risen to its present magnitude during the course of the last eighty years, by accumulating the property of a great number of dispossessed zemindars; although the ancestors of the present possessor had not, by inheritance, a right to the property of a single village within the whole zemindary.

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Para. 2, continued

(c). LAW AND CONSTITUTION OF INDIA, 1825.

(1). It is beyond doubt a fact, and a matter of undoubted history, that, at a comparatively late period, there was no such thing as a great zemindar, either in Bengal or Behar. "It is not," says the author of the *Ayeen Akbaree*, "customary, in the soobah of Bengal, for the husbandman and Government to divide the crop. The produce of the lands is determined by *nussuk*; that is, by estimate of the crop. The ryots (husbandmen) in the soobah of Bengal are very obedient to Government, and pay their annual rents in eight months, by instalments, themselves bringing mohurs and rupees to the places appointed for the receipt of the revenue." And of Behar the same author says: "It is not customary in Behar to divide the crop. The husbandman brings the rent himself, and when he makes his first payment, comes dressed in his best attire."

Pages 51 to 53.

(2). The date of this authentic record is little more than two hundred years ago. How has, or by whom has, the right of property in the soil been totally subverted throughout a country containing twenty-five to thirty millions of people in so short a period? If these, the great zemindars, have acquired lawful right to the soil, it must have been subsequent to this. Let them show the deeds by which they hold; for, except by inheritance, a regular instrument is required to establish their title. Sunnuds from the king, as late as the middle of the eighteenth century, are quoted by Lord Teignmouth as establishing undoubted right in the soil. One in favour of the zemindary of Rajshahye was granted, he tells us, "in consequence of the neglect of

APP. VI. the former zemindar to discharge his revenue." This may be good as a sunnud of zemindary; but this was not a grant of the soil;—not more than a commission—after superseding one collector of land-tax—by the king of England, would be a grant of the estates within the districts specified. So also the "zemindary of Dinagepore was confirmed by a firman of Shah Jehan about 1650." So the origin of the Burdwan zemindary may be traced to the year 1680, when a *very small portion* of it was given to a person named Abou." Nuddea and Lushknepore zemindaries are of later date, about 1719. See Mr. Shore's minute.

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Para. 2, contd.

(3). We have seen above that at the very end of the seventeenth century, the "husbandmen paid their rents to the Crown." This goes to prove that, whatever be the antiquity of the families of the zemindars just mentioned, they were, at the date of the Ayeen Akbaree, considered "husbandmen;" and we know that the viceroy of Bengal, Jafur Khan, "dispossessed almost all the zemindars." I would again ask how this vast accumulation of property has arisen? Some of the zemindars pay half a million sterling of public revenue. Did they purchase the lands? The value, at ten years' purchase, would be five millions! The malikana of ten per cent., at ten years' purchase, would amount to four millions four crores of rupees. Where was the capital to purchase this? It is evident no purchase ever took place; that, consequently, no transfer of the soil was ever made; and that, therefore, those zemindars are not owners of it.

(d). SIR J. SHORE, *2nd April 1783*.

Harington's
Analysis, pages
23—24.

Most of the considerable zemindars in Bengal may be traced to an origin within the last century and a half. The extent of their jurisdiction has been considerably augmented during the time of Jafur Khan and since (1) by purchase from the original proprietors, (2) by acquisitions in default of legal heirs, or (3) in consequence of the confiscation of the lands of other zemindaries, (4) instances are even related in which zemindaries have been forced upon the incumbents.

As escheats appertain to the State, acquisitions in the 2nd, 3rd and 4th of the preceding methods denote official transfers, that is, an official relation to the lands transferred.

V. Hereditary succession to the office of zemindar has been regarded by the advocates of a zemindary settlement as conclusive proof of the zemindar's proprietary rights, but in reality it only marked his official title; thus—

(a). REVENUE LETTER FROM BENGAL, *6th March 1793* (para. 8).

Select
Committee,
1810,
Appendix
No. 9, page 100.

The same principles which induced us to resolve upon the separation of the talooks, prompted us to recommend to you, on the 30th March 1792, the abolition of a custom introduced under the Native Governments,

by which most¹ of the principal zemindaries in the country are made to descend entire to the eldest son, or next heir of the last incumbent, in opposition both to the Hindu and Mahomedan laws, which admit of no exclusive right of inheritance in favor of primogeniture, but require that the property of a deceased person shall be divided amongst his sons or heirs, in certain specified proportions. Finding, however, upon a reference to your former orders, that you had frequently expressed a wish that the large zemindaries should be dismembered, if it could be effected consistently with the principles of justice, we did not hesitate to adopt the measure without waiting for your sanction. (See also Francis' *Revenues of Bengal*, page 59.)

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(6). HALHED'S MEMOIR ON THE LAND TENURE AND PRINCIPLES OF TAXATION IN THE BENGAL PRESIDENCY.

(1). The mokudums are, in some pergunnahs, considered as executing their office of purdhan or mokudum under an original hereditary right, co-equal with that which sanctions the succession to patrimonial property in the soil; in some instances, the purdhanee is included in the zemindary claims advanced by individuals, and its existence is acknowledged by the other proprietors: instances of the office being sold by the incumbent are on record; in general, however, the purdhan's continuance in office depends upon the degree of consideration he enjoys in the eyes of those of his fellow parishioners who are landowners, and who will, by direct or indirect means, secure his dismissal if he neglects their interests. On the office falling vacant, the eldest son of the late incumbent, or a near relation, generally succeeds. But in some places the zemindar malgoozar is considered to have the privilege of nominating a successor;—without the consent of the other landowners, however, his nomination would have little weight; the difficulty of selecting a person who would attend to the interests of the zemindar malgoozar, and at the same time prove acceptable to the ryots, appears to have originated the preference now given to the son, or nearest relation, of the deceased purdhan, who, as a matter of course, inherits no inconsiderable portion of the local and personal authority possessed by his predecessors, and would be equally open to the influence of that species of corruption by which the greater malgoozars retain their power.

(2). The original office of a purdhan or mokudum appears to have been very similar to that of the gram adhiput of the Hindu system; he is a public officer; arranges all the revenue details of his parish;²

¹ This adjective "most" is significant: the Native Governments perforce applied the official rule to zemindaries which had been officially created, such as the numerous creations of Jafur Khan: other zemindars, viz., several minor zemindars, who were proprietors of the whole estates for which they paid revenue direct to the treasury, would be exempt from the official rule.

Here we see a close correspondence, an exact parallel, between the zemindar and the mokudum, in respect of succession to either office, under a law of primogeniture which departed from the Hindu and Mahomedan laws of succession to real property. Hence, and as the mokudum's privileges and lands eventually merged in the zemindar's, the several extracts in Appendix , No. , paragraph , which show the official character of the mokudum's status, equally illustrate the official character of the zemindar.

² These were precisely the functions also of the official zemindar over a larger tract than a village.

APP. VI. is the magistrate of the village, and, with the assistance of the chowkeedars or night watchmen, superintends the police of it.

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Para. 2, contd.

(c). MR. HOLT MACKENZIE.

Sess. 1831-32,
Vol. XI. Questions
2648 and
2649.

Was this mode of sub-dividing zemindaries known in India previous to the permanent settlement? I believe that there was no such system of regular separation previously to the permanent settlement. In some cases a zemindaree seems to have been regarded as an office generally of little value. In others there appears to have prevailed a special custom of primogeniture; and although the general system was to recognize the property as hereditary and divisible, yet under short leases divisions could scarcely be made pending a settlement.

Are there many districts in which the right of primogeniture is supposed to prevail? I believe it prevailed in regard to some estates in all the provinces, but is now confined to certain extensive zemindaries on the western frontier of Bengal and Behar, where the zemindars are the descendants of old rajahs, who were never wholly subdued by the governments that preceded us. In cases in which it had been adopted from considerations merely of financial convenience, the custom was abolished by the rules of 1793.

VI. The zemindar's was an office, inasmuch as other officials would not have been employed as a check upon his collections, and against his exaction from the ryots, if they had been mere tenants on an estate of which he was the proprietor.

(a). PATTON'S ASIATIC MONARCHIES.

1. The office of regulation and control, in respect to the sources and *quantum* of the rent, or revenue, so necessary for protecting the respective rights of the hereditary tenant and the proprietary sovereign, and for checking imposition on the part of the official collector, was filled by officers who have been denominated *canongoes* and *putwaries*. The *canongoe* was the principal and the *putwary* the subsidiary officer in the department of control. * * The relative duties of the *canongoe* and the *putwary* are thus expressed in the *Ayeen Akbary*—"The *putwary* is employed on the part of the husbandman to keep an account of his receipts and his disbursements, and no village is without one of these. The *canongoe* is the protector of the husbandman; and there is one in every *pergunnah*. They were paid by Government for these benevolent purposes, and were essential to the encouragement of agriculture, and the consequent augmentation of the revenue, forming the most marked feature in the financial system of Tudur Mull.

2. It is somewhat extraordinary that these officers are hardly mentioned in the text of Sir Charles Broughton Rouse's *Dissertation* concerning Bengal. The truth is, their official existence was incompatible with the proprietary claim which he assigns to the zemindars; and, accordingly, since the *perpetual settlement* was adopted, their control over the official conduct of the zemindars has entirely ceased.

VII.—The great difficulty and expense of obtaining the usual zemindary sunnud on hereditary succession to the office of zemindar, implies that the succession was to an office, no such difficulty and expense having been incurred by proprietors of land, not being zemindars, on hereditary succession to their property.

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(a). PATTON'S ASIATIC MONARCHIES.

The necessity for the sunnud or commission will appear by the following extract from an article in the Appendix to the *Dissertation*, showing the great difficulty and expense incurred in obtaining the *sunnud* from the court of the sovereign. This article, we are informed, was drawn out by BODE MULL, one of the ablest and best informed of the native exchequer officers. * * "The zemindars succeeded to their zemindaries by right of inheritance; but until they consented to the payment of the *peshkash*, or fine of investiture, to the Emperor, and a proportional *nuzzeranah*, or present to the *Nazim*" (Provincial Governor) "neither the imperial *firman* of confirmation was granted them, nor were they permitted to substitute their own signature to the public accounts in lieu of their predecessor's. It often happened that several years elapsed before the demand of Government could be adjusted. The officers of the *dewanny*" (the revenue department), "in addition to the *peshkash* and *nuzzeranah*, swelled the account with claims of arrears due from the deceased zemindar, and from which they seldom receded, till they had exacted from his successor all that it was in his power to pay." Strange! that such difficulties should attend the succession to a *patrimonial estate*. Pages 177-78.

VIII. The small proportion of the zemindar's share of the produce shows that he was an official, and not the proprietor of the zemindary.

(a). WILKS ON MYSORE.

Under the only doctrine which was recognised in this discussion about the permanent settlement, the proof—and it is abundantly satisfactory—that the land is not the king's, leaves no alternative but to consign it to the zemindar. The author of *The Principles of the Asiatic Monarchies* argues, with great force, that the claim of the zemindar being limited to one-tenth of the sum collected for the king, it is absurd to distinguish, as proprietor, the person entitled to one-tenth, while the remaining nine-tenths are called a duty, a tax, a contribution. The argument is conclusive; but the ingenious writer has not unfolded the whole of the absurdity. Under the utmost limit of exaction recorded in the modern history of India, the sovereign has received one-half of the crop. The real share of the crop which, even under such exaction, would go to this redoubtable proprietor would be one-fifth or five per cent.; according to the laws of Men and the other nations his share would be one-sixtieth, or $1\frac{1}{2}$ per cent. The British Government has named *proprietor* of the land. In this controversy to determine whether the sovereign is the proprietor

APP. VI. proprietor, each party appears to me to have reciprocally refuted the proposition of his adversary, without establishing his own: they have severally proved that neither the king nor the zemindar is the proprietor.

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Para. 2, contd.

b). MR. H. COLEBROOKE, 1813.

Revenue Selections, Vol. I, page 199. But in that view it was the occupant and cultivator with whom the assessment should be adjusted, and on his tenure the revenue secured.

If the occupants and cultivators were the real proprietors, according to notions which have been entertained of the ryottee tenure, and the zemindars were merely public officers collecting the dues of Government, the tithe might have been a sufficient allowance as the recompense of an official duty. A proprietor surely should have more than the tithe, or twice the tithe of the net revenue of his estate.

IX.—The levy of transit duties by zemindars proved that the power exercised was that of an office, not of a landed proprietor.

(a). PATTON'S ASIATIC MONARCHIES.

Page 132.

es; Minute,
d February
30; Fifth
191. page

It is material to observe that the *zemindar* is collector of the *customs* and the *excise*, as well as of the *land rent*. These do not appear to be the necessary adjuncts of a great *land-proprietor* in Europe! The *zemindar* appears to be the collector or farmer of the whole. This circumstance occasioned a minute to be delivered into Council by the great and dignified character (Cornwallis), who acted a part, of which he seems to have been unconscious, when he revolutionized India by establishing what has been called the *permanent settlement* with the *zemindars*. The following extract, which I believe to be authentic, manifests the deception which misled him, and which was so strong as to prevent him from detecting an absurdity at the very time he was stating it. After admitting that *zemindars* "had hitherto held the *collection of internal duties*," he observes:—"It is, I believe, generally allowed that no individual in a State can possess an inherent right to levy a duty on goods or merchandise purchased or sold within the limit of his *estate*, and much less upon goods passing along the public roads which lead through it. This is a privilege which the *sovereign power* alone is entitled to exercise; and nowhere else can it be lodged with safety"—which circumstance ought to have informed the noble lord, that the *zemindary* was not an *estate*, but a *district*; and that the *zemindar* was not a great *land-proprietor*, but an *officer of Government*.

(Instead of drawing this obvious inference, Lord Cornwallis resumed for Government the power of levying taxes of any kind upon commerce, and gave compensation for their illegal exactions to the *zemindars*, who, nevertheless, down to the present day, continue to levy some of these taxes.)

3. To the presumption raised by the nine groups of extracts in paragraph 2, that the zemindary was an official appointment, not a right of property in the whole landed estate for which the zemindar paid the land revenue to Government, the advocates of the zemindary settlement oppose the sole fact that the revenue was paid to Government by the zemindars. But—

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Para. 5.

RESOLUTION OF GOVERNMENT, 22nd December 1820.

(1). Even where the tehsildar had no direct interest to mislead, the convenience and despatch of public business would naturally suggest the expediency of limiting the number of persons with whom the business of the collections was to be conducted, and a preference would naturally be given to those who had heretofore paid the revenue under the Native Governments; but by these, as the distinction between farming and proprietary engagement was not always clearly observed, so the mere circumstance of a party's being the sudder malgoozar, appears to have been held as affording little or no ground for a conclusive judgment in regard to the nature and extent of his proprietary rights. Their system, therefore, did not require a minute enquiry into the point at the time of interchanging engagements, even if minute interference with the interior details of the villages, with a view to the adjustment of private rights, had been more a part of their practice (*para. 125*).

Payment of
revenue to
Government di
not imply
proprietary
rights.

(2). Under our system, however, the record of the settlement is taken as a *prima facie* evidence of property. * *

(3). Hence the great defectiveness of the records in which persons were entered as proprietors without a reference to mofussil possession, and a definition of the nature and character of the tenure held by the engager (*paragraph 127*).

(4). His Lordship in Council is indeed at a loss to conceive whence the opinion, that the party admitted to engage for the Government revenue acquired thereby any new rights of property adverse to those possessed by other individuals, can have so generally arisen (*para. 149*).

4. Perhaps these extracts are superfluous; since the one fact that the revenue was farmed throughout the provinces before the permanent settlement is conclusive that the engagers for the revenue were not the proprietors, for the farmers of the revenue were clearly not the proprietors of all the lands for the revenue of which they contracted with the Government.

5. Ideas on this subject were confused by the circumstance of the person who engaged for the revenue—whether zemindar, in the modern sense of the term in Lower Bengal, or farmer,—being responsible in his person, and in his actual landed property, for realising from all the lands for the revenue of which he engaged. (Colebrooke's Supplement, page 269; and paragraph 2, section IIa of this Appendix.)

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6. The foregoing extracts corroborate the following accounts of the *status*, position, and rights of the zemindars. Mr. Grant's type of zemindar, as set forth in section I, will be recognized also in some of the other extracts, and in the account of *mocuddums* or heads of villages:—

I.—MR. J. GRANT, *Serishtadar of Bengal*.

Fifth Report,
page 251.
Analysis of
Finances of
Bengal.

(a). It is incontrovertible that the zemindars or other classes of natives, hitherto considered the rightful proprietors of the lands, are actually no more than annual contracting farmers or receivers of the public rents, with stated allowances in the nature of a commission on the receipts, and a small estate, or portion of their territorial jurisdictions, set apart for constant family subsistence, whether in or out of office, but never exceeding on the whole, by a universal prescriptive law of the empire, 10 per cent. on the mofussil collections.

Ibid, page 276.

(b). The tenth part of the *rebba chouth* (or Government's one-fourth share of the gross produce of the land) was liable to defray the charge of intermediate agency of the whole body of the zemindars, acting permanently in one or all of the following official capacities, by virtue of *sunnuds* or letters patent from the high dewany delegate of Government, *viz.*, as—

- 1.—Annual contracting farmers-general of the public rents.
- 2.—Formal representatives of the peasantry.
- 3.—Collectors of the royal proprietary revenue, entitled to a russoom or commission of 5 per cent. on the net receipts of the mofussil or subordinate treasuries.
- 4.—Financial superintendents of a described local jurisdiction, periodically variable in extent, and denominated *cahtiman*, trust or tenure of zemindary, talookdary, or territorial servile holding in tenancy. Within this, however, is appropriated a certain small portion of land called *nankar*, partaking of the nature of a freehold, serving as a family subsistence to the superior landholder, to give him an attachment for the soil and make¹ up the remainder of his yearly stated tythe for personal management in behalf of the State.

(c). See also paragraph 1, section II, *a* and *b*, where the account given, though that of the Select Committee of 1812, is a concise abstract of the long involved sentences of the Serishtadar of Bengal.

II.—SIR J. SHORE, *18th September 1789*.

5th Report,
page 454.

(a). In his letter of the 23rd July 1789, the Collector details many objections, which I shall hereafter state, to a settlement with the immediate proprietors of the soil; recommends in preference the employment of farmers, contends for the propriety of this system, and proposes the plan of a ten years' settlement with fourteen farmers for Sarun, and four

¹ i.e.—5 per cent. russoom, and 5 per cent. nankar, equal to 10 per cent.

for Chumparun; and he gives the following definition of a zemindary APP. VI. in Sarun:—

“That it is a portion of land consisting of sundry farms paying revenue to Government, belonging to numberless proprietors managing their lands, either by themselves or their agents, but acting in general under a nominal proprietor, called the zemindar (with whom they engage for their revenue) having a real property perhaps of a fiftieth part of the zemindary.”

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WAS AN OFFICER.
Para. 6, contd.

(b). I cannot reconcile the Collector's definition of a zemindar, or the fact of a zemindary settlement as made in September last with 74 proprietors, with the declared refusal¹ of the zemindars to rent¹ each other's lands, combined with the number of zemindars in Sarun (paragraphs 18 and 19).

III.—PATTON'S ASIATIC MONARCHIES.

(a). There can be no question that the appointment of a zemindar is an office. To deny this appears to me like denying that a man has a nose upon his face. The refutation is effected in the same manner; we point to the *nose*; we point to the *zemindary sunnud*. Of the two, the evidence in the last case seems to be the strongest; for, upon the feature in question, the word *nose* is not written; but in the *sunnud*, the word *office* is expressly written, and the appointment declared to be an office. Page 83.

(b). It seems, therefore, to be clearly established, that the *zemindars* could not possibly be the *proprietors* of the lands, the rents of which they were required, as the *aumils* of Government, to collect from the proprietors. But there was another description of land within the districts of the zemindars, of which they were the undoubted proprietors, which was distinguished by the name of *nankar* land, and which paid no rent at all to Government. The zemindar had it in absolute property in lieu or in part of salary of office; for which reason it might be styled with propriety his official land. It was distinguished from the *khalsah*, or *exchequer* lands, whose rents were paid into the royal treasury, and also from the *jagheer* lands, the rents of which were assigned by the sovereign to an individual during pleasure.* * Pages 158-9.

(c). In the glossary annexed to the *Dissertation*, the explanation given to the word *comar* lands which are *khalsah* lands (or land whose rent is paid to Government) out of lease, or not possessed by pottah tenure, seems rather applicable to *nankar* lands; they are called a *zemindar's demesne* lands; upon what pretence, I cannot conceive. The *nankar* lands might be so denominated, because they are the zemindar's absolute property, which the others are not: for he must account for the rent of the *comar* lands to Government. * * It is somewhat extraordinary that this description of land, which really was *property*, and belonged absolutely and entirely to the zemindar, should have altogether escaped the notice of the author of the *Dissertation* (Sir Broughton Rouse). Was

¹ The zemindars willingly paid their shares of the Government revenue through a nominal proprietor or representative zemindar, while they refused to pay rent, in addition, to the latter.

APP. VI. it because of the difficulty to explain, where the *whole district* was said to belong to the *zemindar*, how a part of it should be so differently circumstanced from the rest.

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Para. 6, contd.

IV.—MR. HOLT MACKENZIE, 1832.

Sess. 1831-32,
Vol. XI, page
308.

I shall only remark that the zemindars of Bengal, though many of them held originally a mere office, must be considered as having been vested by our settlement with the property of everything within their zemindaries, which belonged to the Government, and was not reserved by it.

V.—MR. FORTESCUE, 12th April 1832.

Ibid,
Questions 2276,
2278, 2282 to 84,
2287.

Generally speaking, the zemindars were not what the operation of the regulations afterwards made them. The term "zemindar" is a very indefinite expression; it does not imply any right in itself; it is merely a relative term, "zameen" meaning land, and "dar" a person having that relation; but in itself it expresses no precise relation; and we see consequently that the term zemindar is at times applied to a person who neither himself claims, nor is supposed by others to have, the proprietary right in the soil over which he is zemindar. A person who possessed property, obtained from other sources, might be a zemindar, but he had not that property, because he was a zemindar. It was, and is, the usual course for the son of a zemindar to inherit; but though that did obtain, it did not yield to him, necessarily, any proprietary right beyond what he had of his own and family; his was a right (to which he succeeded, perhaps) of arranging for the revenues of the extensive holding. It was a hereditary right to perform a given duty: but it did not affect the right of the ryots. * * What I wish is particularly to guard against any expression which should lead the Committee to suppose that the zemindar possessed property in the zemindary beyond that which was accidental.

VI.—MR. A. D. CAMPBELL'S "ABLE PAPER," 1832.

(a). The zemindar, as such, was originally the mere steward, representative or officer of the Government, or rather the contractor for their land revenue, often hereditary; and the difference between the land revenue of the State which he received from the cultivators, and the lower jumma or contract price, compounding for it, which he paid in lieu of it into the Government treasury, constituted, after deducting his own actual charges in its collection, the value of his zemindary contract or tenure, generally estimated by Government from ten to fifteen per cent. above his jumma payable to them, and called *malikana*, or the peculiar property of which, alone, he is the owner (*malik*). * * He therefore possessed a valuable and often hereditary contract interest in the *land revenue* of the State, the collection of which, alone, was thus transferred to him; but as zemindar he possessed no right whatever *in the soil itself*, which, subject to the payment of that revenue, was held in fields exclusively by the cultivators on the various tenures described above.

(b). This view of the subject is by no means opposed to the fact, that nearly all the zemindars, from the highest to the lowest, were also themselves cultivators to a greater or less extent. The petty head of the village, besides being a zemindar, was also, perhaps, the greatest cultivator in his own neighbourhood; and each of the higher grades of zemindars, even to the tributary sovereign of the hills, had his private lands (*neez, kummatture*), whence he drew grain and other supplies for domestic purposes of his, perhaps, numerous household. But unless the public revenue on these lands had been remitted to him by Government, as *nankar* (food, subsistence), and thus constituted an addition to the *malikana*, granted by the State on account of his hereditary contract duties, he would have been required to account for the land revenue of his own fields, in common with that which he collected from those occupied by other cultivators, and his *malikana*, in that case, would have been confined to the mere established deduction from the joint aggregate. The fields which he held in his distinct capacity as a cultivator, were never, in the slightest degree, confounded by the native governments with his official contract or zemindary tenure.

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Para. 6, contd.

(c.) The distinction between the right of the cultivator to the soil itself, subject to the payment of the public revenue, immemorially limited by local, though ill-defined usage, and the right of the zemindar to the receipt of that land revenue from the cultivator, subject to his own payment to Government of a separate lower or reduced composition in lieu of it, called *jumma*, periodically adjusted between the zemindar and the state, which was never subjected to limitation by those who preceded us in the sovereignty of India, is of the greatest importance. For, simple as this distinction now appears to be, to all who have waded through the vast mass of information now procurable, it is the want of a clear perception of these two very distinct rights which has given rise to the chief errors, committed at the period of the permanent zemindary settlement.

(d). At that period this distinction was unknown. In the discussions preceding the permanent zemindary settlement, however, it had been fully admitted that the cultivator possessed a right to the soil so long as he paid the public revenue demandable on his fields, which was held to have been limited by an act of the sovereign power, beyond the arbitrary determination of the zemindar. Indeed, this cannot be more broadly stated, nor in more distinct language. It was also maintained that the zemindar had no claim to an absolute property in the land itself; neither was there any proof "of the existence of such right discernible in his relative situation under the Mogul government in its best form;" yet the zemindar's undeniable, and often hereditary, property in the *land revenue* of his *entire zemindary* was confounded with the separate property in the land itself, which, as a cultivator, he possessed in some of its *fields* alone; and as he in general happened to occupy, in the ranks of society in India, the place held by the gentry or aristocracy in Europe, this fortuitous circumstance tended to confirm the error, and seems to have rendered it a matter even of policy, to acknowledge him in the new light of the landed proprietor, not only of his own few fields, but of every field even belonging to other cultivators situated within his entire zemindary or hereditary revenue jurisdiction.

APP. VI. VII.—LORD CORNWALLIS, 3rd February 1790.

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Para. 6, conclud.

(a). The question that has been so much agitated in this country, whether the zemindars and talookdars are the actual proprietors of the soil, or only officers of Government, has always appeared to me to be very uninteresting to them; whilst their claim to a certain percentage upon the rents of their lands has been admitted, and the right of Government to fix the amount of those rents at its own discretion has never been denied or disputed.

(b). Under the former practice of annual settlements, zemindars who have either refused to agree to pay the rents that have been required, or who have been thought unworthy of being entrusted with the management, have, since our acquisition of the Dewanee, been dispossessed in numberless instances, and their land held khas, or let to a farmer; and when it is recollected that pecuniary allowances have not always been given to dispossessed zemindars in Bengal, I conceive that a more nugatory or delusive species of property could hardly exist.* *

(c). To those who have adopted the idea that the zemindars have no property in the soil, and that Government is the actual landlord, and that the zemindars are officers of Government, removable at pleasure, the questions regarding the right of the zemindars to collect the internal duties on commerce would appear unnecessary.¹ These are not the grounds on which I have recommended the withdrawal from the zemindars of the collection of internal duties.

(d). I admit the proprietary rights of the zemindars.

7. There were three parties, one or other of whom could have had proprietary right in the land, *viz.*, the Government, the zemindar, and the cultivator. In clause (b) the noble author of the zemindary settlement conceived that a more nugatory or delusive species of property than that of zemindars could not exist; he and the advocates of that settlement maintained further, that the State was not the proprietor of the soil: yet, far from admitting the proprietary right of the remaining or third party, the cultivator was put aside *sub silentio* (just as his rights passed away, in consequence, *sub silentio*) and the illogical conclusion (clause d) was affirmed that the zemindar was the proprietor; and so the rights of millions of the real proprietors were destroyed by the amiable and benevolent representatives of a nation which desires to do justice to India, which is rich enough to make the amends honestly due for even well-meant injustice, and which, in one of the famine problems of the present day, is confronted with the consequences of its unparalleled confiscation of rights in 1793.

8. LAW AND CONSTITUTION OF INDIA.

(1). The zemindars may purchase property like individuals; but that the name of zemindar is an official designation there can be no doubt. The

¹ This amounts to a strong assertion of the official *status* of the zemindar.

commission, or sunnud of zemindary granted to Cheytun Sing, of the zemindary of Bishenpore, which office was held by his grandfather, to whom he was appointed in succession, is well known. As a common work, I refer the reader for it to Patton's Asiatic Monarchies, Appendix No. 1. The sunnud is addressed to the mutsudees, chowdries, canoongoes, talookdars, ryots and husbandmen of Bishenpore, setting forth "that the office of zemindar has been bestowed on Cheytun Sing, "and certain conditions are specified. He is to pay a peshcush of one hundred and eighty-six mohurs, to be conciliatory to the ryots, so as to increase cultivation and improve the country, *to pay the revenue of Government into the treasury at stated periods*; to keep the high roads in repair and safe for travellers, to be answerable for the property of travellers if robbed; *to render and transmit the accounts required of him to the presence every year, under his own and the canoongoe's signature.* * * We are then given the muchulcah, or written obligation given in by the nominee. He promises to be diligent in the discharge of his office, to be mild and conciliatory to the ryots, to increase the cultivation, to pay the revenue to Government regularly into the treasury at the stated periods, to transmit the accounts signed by himself and the canoongoe regularly. We have finally the security for his person of the canoongoe of Bengal "that the office of zemindar having been bestowed upon Cheytun Sing, I will be security for his person", &c.

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2. So far, therefore, as the holders of large zemindaries, such as many of the zemindars of the province of Bengal are, it will probably not admit of dispute that their tenure was *official*, and that the *bond fide milkeet* (ownership) of the soil did not rest in them.

9. The foregoing extracts, which affirm the official status of the zemindar, take account of his *malikana* or percentage on the collection of the Government land revenue from the cultivating proprietors, and of only those his *neej* lands, which were *nankar* lands, or the lands allotted as part of his remuneration as zemindar. With one exception, (Mr. Fortescue, section V), the lands other than *nankar*, of which the zemindar could be the proprietor, on the same footing as the other cultivating proprietors, are not mentioned. Notices of them will be found in the following extracts which, in other respects, confirm the preceding accounts of the official *status* of the zemindar.

I.—ROUSE'S DISSERTATION CONCERNING LANDED PROPERTY IN BENGAL, 1791.

To one in particular, a man of small but independent fortune, pos-
sessed of extensive learning, and a magistrate of unimpeached integrity, Mirza Mohsen, I formerly proposed several questions in writing, with-
out communication with any person whatsoever, upon the subject
of zemindars. The answers he gave me were the result of his reading
and enquiry.

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Para. 9, contd.

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Question (3).—In the Dewany sunnuds a zemindary is styled an office (khidmut), and an office is dependent upon the pleasure of the employer. But at present the children of the zemindar take possession of the land enjoyed by their father and grandfather, as an inheritance. How long has this rule of inheritance in zemindaries prevailed? and by what means has it been established?

Answer (a).—“The reason for calling the zemindary an *office* in the Dewany sunnud, is this,—The zemindars are commissioned on the part of the sovereign for three duties: First, the preservation and defence of their respective boundaries from traitors and insurgents. Secondly, the tranquillity of the subjects, the abundance of cultivators, and increase of his revenue. Thirdly, the punishment of thieves and robbers, the prevention of crimes, and the destruction of highwaymen. The accomplishment of these objects is considered, in the royal grant, as the discharge of office to the sovereign, and on that account the word office (khidmut) is employed in the Dewany sunnud for a zemindary.

(b). The zemindaries of the present period are of three sorts: (1) Jungulboory, (2) Intekaly, and (3) Ahekamy.

1. *Jungulboory* (clearing of waste) is a tract of land which having gone to decay, and become incapable of producing the amount of the royal revenue (jumma padshahy) has been restored to prosperity by the diligence and industry of another person, who has thereby re-established the revenue of the crown (kheraji). Such is the zemindary of Serayal, &c.

2. *Intekaly* (transfer) is land in a good state of cultivation and productive to the amount of the revenue, yet on account of the neglect of the incumbent, or for want of heirs to the land, another person has, with the permission of the emperor, or of the government delegated by him, obtained a sunnud for the office in his own name. Such is the zemindary of the Pergunnah Buldakhal, &c.

3. *Ahekamy* (by order or authority) is, when, notwithstanding the diligence of the zemindar in the duties of his station, the officers about the person of the prince, who are employed in the affairs of the zemindars, have, upon interested motives, obtained orders for zemindaries to be granted to them in their own names. Such is the zemindary of Rajah Luckinarain, and this mode has taken place in latter times.

4. (c). (Going back to a). It was a rule in the time of the ancient emperors, that when any of the zemindars died, their effects and property were sequestered¹ by the Government. After which, in consideration of the rights of long service, which is incumbent on sovereigns, and elevates the dignity of the employer, *sunnuds* for the office of zemindary were granted to the children of the deceased zemindar, and no other person was accepted, because the inhabitants could never feel for any stranger the attachment and affection which they naturally entertain for the family of the zemindar, and would have been afflicted if any other had been put over them.

(d). At present, the children of a zemindar take to the land possessed by their fathers and grandfathers as an inheritance; it is done upon the strength of the ancient customs and institutions, according to which the zemindary of the father was transferred by sunnud to the son.

¹ Evidence of official status.

If the office of zemindary, in the nature of their officers, were limited to the life of the incumbents, they would never have exerted themselves to promote the improvement and prosperity of the country. Nor would the population and revenue have been advanced, as they are now, from what they were in former times. But when the emperors thought it politic, upon the decease of a zemindar, to continue the office of zemindary to his children, the zemindars on their part felt a confidence and satisfaction in discharging the duties of their situation, and always employed their strenuous endeavours to promote the prosperity of their districts.

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(e). Such has been the progression of the general rule of inheritance in zemindaries. With regard to one species, indeed, the jungulboory, it is conformable to the holy law, and to common practice, that persons should gain an hereditary zemindary in land which they have cleared from waste, under the encouragement of the prince, and brought into a state of cultivation, so as to produce the full revenue of Government, and the children of such persons have a decided right to hereditary possession, which both ancient and modern sovereigns have recognised. But as to the other zemindaries, styled *Intekaly* and *Ahekamy*, before explained in the second¹ article, which the possessors have received in a state of perfect cultivation, effected by the industry of others, although their children also have claimed a hereditary right in these zemindaries like those of the sort called jungulboory, and upon the strength of ancient practice, have possessed the zemindaries of their ancestors upon a similar footing, yet the holy law does not of itself annex to these any hereditary title. The renewal of the sunnud from person to person is an argument against the inheritance by right. This must, therefore, depend upon the prince and the actual government of the country.

10. Perhaps it is hardly necessary now to add in the following extracts a statement that hereditary succession to the office of zemindar did not imply a proprietary title in the whole of the estates which formed the zemindary.

I.—PATTON'S ASIATIC MONARCHIES—

(a). The prejudices of Europe confirm hereditary establishments wherever they are to be found, and, if it be possible, convert them into *tenures of land*, because, among the English in particular, the law of *primogeniture* and hereditary succession applies peculiarly to *landed property*; nor can they suppose the hereditary rule to be followed in the disposal of a trust, or an office, which has a reference to land, without annexing to it the whole property of the official district, however extensive may be its boundaries: the argument is, that *hereditary succession* infers *property of land*. If a man had succeeded to his father, and his grandfather, and his great-grandfather, as the superior

Pages 195-90.

¹ To land, of which the proprietary right was not official, including reclaimed waste, the inheritance was independent of a sunnud; but to the official part of the zemindary, including lands brought into cultivation by the industry of others, the succession was by sunnud, that is, only to one-tenth over the Government's share of the produce.

APP. VI. or steward of an estate, and they had all in succession enjoyed a farm rent-free, for their trouble,—has this man a right to claim the property of the whole estate? This appears to me to be precisely the situation of the Indian zemindar. Now, stewardships, it has been observed, were really hereditary among the Hindus; and on this account they appear to have been conferred pretty generally, according to the same rule, by the Mahomedans. But to the Mahomedan succeeds the Englishman, with his head full of the hereditary claims of *great landed proprietors*, derived from the feudal institutions of the north; and he insists upon converting the humble *steward* into the princely *proprietor*, and talks of *right* and *justice*, while he robs millions of their property, and sacrifices to his prejudices all the proprietary prerogatives of government.

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Para. 10, conclud.

(b). (After quoting from Menu and the *Code of Gentoo Laws* published by Mr. Halhed)—

Page 170.

It therefore appears that if the *zemindary* had been a *landed estate*, continuing by hereditary descent in the same family, it would not, by the Hindu law (which alone could be applicable), have descended to *one son*, where there were many, nor to *one relative*, where there were others of *equal kindred*; but it would have been equally divided among all the equal relatives of the last occupant, which, not having been the case, demonstrates, I think, that it could not be esteemed *landed property*. So that the circumstance upon which the European idea of landed property is founded actually infers an opposite conclusion; and establishes with certainty that the zemindary appointment must have been an *office*, which, not admitting of division, could only be continued (when given to persons of the same family) in the manner that has been followed. But even if the application of the *law of England*, in direct opposition to the *Hindu law*, could be admitted, it would only apply to the *nankar land* of the zemindar, which was officially his actual property, as it paid no rent; but it could not be applied to the *khalsa*, or *exchequer* lands, the rents of which wholly belonged to Government; and the overplus, whatever it might be, was expressly declared to be the property of the cultivator or ryot.

11. Under the ancient system, village boundaries were defined; a certain proportion of waste land was included within this boundary; and co-sharers in the headship of villages (meerassdars), heads of villages, heads of groups of villages, and zemindars, had, more or less generally, a property in this waste to the extent of receiving rent from cultivators of it, subject to the payment of the Government revenue; some of the extracts in the following sections relate to these official zemindars; the others illustrate generally that the rights of the minor officials merged in those of the zemindar.

I.—PATTON'S ASIATIC MONARCHIES.

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In a glossary which accompanies Sir Broughton Rouse's *Dissertation*, I find the word '*aumil*' explained *native collector or manager of a district*

on the part of Government. This definition seems applicable to a *zemindar*. APP: VI. But not being entirely satisfied upon this head, I applied to a gentleman, whose knowledge of the Persian language, and whose avocations in India, I understood, would give authority to his judgment, stating my questions in writing, without assigning any particular cause for the inquiry. To my question respecting an *aumil*, his answer was: "An *aumil* is an agent." To my question—"A *choudry*, or a *zemindar*, collects immediately from the ryots?" Answer—"Doubtless." "How are these persons relatively situated?" Answer—"The *zemindary* officers are termed his *amila*; they act on his behalf, and under his authority; the *zemindars* themselves may be considered as the *amila* of Government. It was a general term, comprehending all those employed in the collection of the revenue, though now confined to the subordinate agents." The reader will observe that at the time, a hundred and thirty-two years since, when *Aurangzebe* issued this edict (firman of rules for the collection of revenue), the general term *amil* or *amila*, "comprehending all those employed in the collection of the revenues," must have included *zemindars*; but at any rate, even as the word is now understood, it must be applied to the agents of *zemindars*, in which case it is impossible that the cultivators, who are mentioned in the firman as the proprietors of the land, could be the *zemindars*; because the *zemindars*, or their agents (under the designation of *aumils*), are the persons here instructed how to conduct themselves towards those very proprietors. Would the Emperor enjoin them how to behave towards themselves? or would he instruct the agents of the *zemindars* to admonish the *zemindars* to cultivate their land? The firman says,—"The proprietor being present, and capable of cultivating it, let them (the *aumils*) admonish him" (the *zemindar*!). This cannot be. * * The second article in the firman states: "But if, upon examination, it should be found that some" (husbandmen) "who have the ability, and are assisted with water, nevertheless have neglected to cultivate their lands, they" (the *aumils*) "shall admonish, and threaten, and use force and stripes."

In *kheraj mowezzeff* (rent paid in money) they (the *aumils*) shall acquire information of the conduct of the proprietors of land, from whom this tribute is to be collected, whether they cultivate or not; and if they (the *aumils*) learn that the husbandmen are unable to provide the implements of husbandry, they shall advance them money from Government, in the way of *tekavy*, and take security. In the same sentence, proprietors of land and husbandmen are here mentioned; do they mean the same persons? This seems to be answered in the affirmative, by the succeeding article. "Third. In *kheraj-mowezzeff*, if the proprietor of the land, for want of means of providing the implements of husbandry, has been unable to cultivate it, or has deserted, leaving the land uncultivated, they (the *aumils*) shall either give the land in farm, or allow another to cultivate it" (on account of the proprietor), "or they shall appoint a person to succeed the proprietor, who shall cultivate the land; and after paying the tribute, whatever remains, he" (the substituted farmer) "shall apply to his own use; when the proprietors of the lands shall again have the ability to cultivate them, they shall be restored to them." This article seems to establish that the proprietor of the land, and the husbandman, is the same person, and

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Para. 11, contd.

APP. VI. that it is impossible for the *zemindar*, who is the *aumil*, or whose agent is the *aumil*, to be the proprietor. The fourth and fifth articles contain other instructions to *aumils* respecting their duties towards *proprietors* or *husbandmen*. It seems, therefore, to be clearly established, that the *zemindars* could not possibly be the *proprietors* of the lands, the rents of which they were required, as the *aumils* of Government, to collect from the *proprietors*.

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Para. 11, contd.

II.—SIR BROUGHTON ROUSE.

Page 25.

(a). I have examined from attested copies now in my own possession the sunnuds of a zemindar, talookdar, and chowderry, which latter, if I recollect right, is considered in the modern practice of Bengal as the head of several talookdars united under one name, and I find the tenor of them exactly the same.

(b). MIRZA MOHSEN, a learned authority, quoted by Sir B. Rouse.

Page 46.

(1). In times prior to the irruptions of the Mahomedans, the Rajahs who held their residence at Delhi, and possessed the sovereignty of Hindustan, deputed officers to collect their revenues (*kheraji*) who were called in the Indian language Choudheries. The word zemindar is Persian.

(2). On the Mahomedan conquest, the lands in Hindustan were allotted to Omrah Jaghirdars for the maintenance of the troops distributed throughout the country. Several of these Omrahs having rebelled, the emperors thought it would be more politic to commit the management of the country to the native Hindus who had most distinguished themselves by the readiness and constancy of their obedience to the sovereign power. In pursuance of this plan, districts were allotted to numbers of them under a reasonable revenue (*jumma monasib*) which they were required to pay in money to the governors of the provinces, deputed from the emperor.

3.

(3). The zemindar has a pre-eminence over a chowdhery in three respects which will be specified in another article. The chowdhery, under the sovereignty of the Rajahs, had no concern in the administration of the country, which has become the custom under the Imperial Government. Their business was simply to collect the established revenue (*Zer mokerery*).

III.—GHOLAM HOSEIN KHAN, son of Fukeen-ool Dowlat, formerly Nazim of Behar (Appendix to Minute of Sir J. Shore, 2nd April 1788).

Harington's
Analysis of
Regulations,
page 113 et seq.
Q 1st.

(a). The literal meaning of the word *zemindar* is *possessor*, or proprietor of *land*, but in its general or accepted meaning it implies a proprietor of land who pays rent to the emperor or any other ruler, and is equally applicable to every landholder, whether possessing a greater or a less number of villages, or only a portion of a village. Land being a species of that property which is deemed transferable in all countries the proprietorship of it may be obtained in the same manner as that of any other property of a similar nature, *viz.*, (1) by gift, (2) by purchase, with the mutual consent of the parties, (3) by inheritance.

(b). The principal zemindars received titles and jageers according to their rank, whilst those of an inferior degree, in the event of their being obedient to the orders of Government, attentive to the improvement of their lands, and punctual in the payment of their revenues, received *nankar* proportionate to their exigencies, besides which they had no other allowances. The *nankar* was deducted from the revenue payable to Government. Afterwards, on the decline of the empire, villages were granted for *nankar* in lieu of money.

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Para. 11, contd.
Q. 13th.

(c). What is a chowdry, and what is the difference between a chowdry and a zemindar? Many of the principal landholders of Behar were denominated chowdries, as, for instance, Bishen Sing, the grandfather of Narain Sing, the zemindar of Seris Cotumba. In the time of Akbar and his successors, the *crories*, in obedience to the orders of the emperor, went to court. Such among the zemindar's relations as possessed abilities, the emperor, after satisfying himself on that point, nominated to the management of particular districts; and by conducting the business to his satisfaction, they obtained an allowance of *nankar* and received the appellation of chowdry, signifying chief, or director. Thus the superintendents of the customs are denominated chowdries, because it is their duty to superintend the business of the department. In later times, those zemindars

Q. 20th.

APP. VI. system was essentially hereditary. * * And so we find that while the Hindu officers succeeded to their office simply by descent, or by the mixture of descent and election which sometimes prevailed, yet this established hereditary right was not sufficient in Mahomedan times without some recognition by the State. * * A system of government, which was opposed to hereditary offices, would naturally tend to become, if it was not originally, a highly centralised government; in this again presenting a marked contrast to the Hindu system, with its village communities. In this respect, also, there seems to have been a struggle between the two opposite principles, and the village communities ceased to develop and tended to decay under Mahomedan rule. * *

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(b). The tendency of the Mahomedan rule would therefore be, as it seems to me, to depress, at any rate at first, the village community, and to make it shrink within itself, and to recognize very slightly any one below the chief collector of the revenue, whether headman or rajah; and the tendency would further be to enhance at first the rights and powers of the revenue collectors as agent against all below them, and thus give them the means of carrying on with success a struggle with the Mahomedan ideas, and of encroaching on the rights claimed by the State. * *

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(c). Whether the causes be as I have suggested, or not, we find that zemindars did arise and become powerful in Mahomedan times, displacing to a great extent the village headman; and that the village fiscal organization fell into decay, and its growth and development were arrested.

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(d). The Mahomedan rulers continued the same revenue machinery and collected the revenue through the Hindu chowdries, and, where these had existed, zemindars, as the established representatives of the cultivators, and as collectors of the revenue of a fiscal division or pergunnah. The chowdry afterwards became the Mahomedan *cory* administering a *chucklak*, or a district yielding a crore of dams, or $2\frac{1}{2}$ lakhs of rupees, and he was one of the officers from whom zemindars sprung.

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(e). The headman generally continued to distribute the assessment amongst the villagers, as he did even down to British times; and he realised the revenues from the cultivators, which he paid into the treasury, or to the superior revenue authority. In later times the headman generally sank into the position of a subordinate revenue payer, or of a muzkooree, instead of a pujooree malguzar, paying revenue, not direct to the treasury or the superior revenue officer as such, but paying through a zemindar or talookdar. The village community appears to have gradually sunk, and to have lost its importance as a fiscal unit, although it may have retained and, perhaps, intensified its social influence.

Pages 63-64.

(f). In those parts of the country where the village communities were in vigour, the headmen seem to have retained their position to some extent, and to have dealt with the State direct as pujooree malguzars under the old Hindu titles of mokuddums, munduls, and bhunnias (or zemindars). But in other places the ancient rajahs and revenue collectors became talookdars and zemindars, and collected the revenue as such;

* * These zemindars and talookdars, as we have seen, generally contrived to absorb the functions, or at least the chief emoluments, of the headman, and to displace him to a great extent. Thus the Rajah of Benares is said to have attained his position by this means.

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—
USURPATION BY
ZEMINDARS.

Para. 12.

Page 61.

(g). Thus arose zemindars and talookdars. Many of the superior zemindars descend by primogeniture, a fact which perhaps points to their having been derived from the ancient rajahs, as a raj undoubtedly descended mainly in this mode. The inferior zemindars grew out of collectors, farmers, and other officers of revenue, headmen, and even robber chiefs.

(h). At the Mahommedan conquest, those who claimed to collect the revenue did not claim the ownership of the land; they claimed a right to collect, and sometimes a kind of property in the collections, but nothing more. But in course of time, the zemindars who had grown out of these elements began to encroach upon the rights of both the State and the cultivator; and by the time of Ala-ood-deen, who died in A. D. 1316, they were thought to require curbing. The superintendents of the revenue department were accordingly required "to take care that the zemindars demand no more from the cultivators than the estimates the zemindars themselves had made," thus bringing them back to their original position, to some extent, and forbidding what were known as abwabs and cesses. But in spite of this check, the power of the zemindars was not crushed, but they regained their position, and ultimately became almost independent.

12. Mr. James Grant, Sheristadar of Bengal, in a pamphlet entitled "An inquiry into the nature of zemindaree tenures," explained how there was brought about the discordance between truth, right and fact on the one part, and the conclusion on which the Government acted in declaring the zemindars to be the proprietors of the lands in their zemindaries. The substance of Mr. Grant's account is given by Mr. Halhed in his "Memoir on the land tenure and principles of taxation: Calcutta, 1832."

I.—MR. C. N. HALHED—

(a). The zemindars, who it is abundantly shown in the evidence laid before a Committee of the House of Commons in 1772, were merely the agents through whom the revenues were realised, and not the proprietors of the soil, had been in the habit of borrowing money from individuals at a high rate of interest, on their personal security, or on mortgage of the ensuing crops.

(b). The creditors pressed the zemindars for their claims, but were, for a time, content to obtain renewed bonds, with accumulated interest added to the principal, till at length these private claims against the zemindars exceeded three millions sterling, and the revenues were endangered. In the meantime, the Supreme Court of Calcutta, viewing the zemindars as the servants of Government, deemed them, in this capacity, amenable to the jurisdiction in the terms of their charter,

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Para. 12, conclud.
Appendix A,
page-II.

Zemindars
recognised as
proprietors to
evade jurisdic-
tion of Supreme
Court.

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and entertained the suits which the holders of the bonds entered against them to recover the amount of their claims, seized their persons by mesne process and issued extents against their movable property.

(b). The Government feared that "a judicial enquiry into the zemindars' rights and tenures, whenever it shall happen, is likely to have important consequences on the Government of this country; should it be determined that a zemindar is an hereditary officer, who collects the revenue in trust for Government, whose jumma is fixed only to prevent embezzlement, and who is liable to be removed at will, it will be argued, and on plausible grounds, that every zemindar is a servant of the Company, an officer of Government, and, therefore, subject to the jurisdiction of the Court; should it, on the other hand, be decided that a zemindar is an absolute proprietor of his zemindary, in every instance where he is dispossessed he may reclaim his right thus established by a process in the Supreme Court against the Company, contest the grounds on which he is excluded from possession, or on which his land is assessed; in short, in whatever way the question may be decided it is likely to open a wide field for litigation, and serve to involve this Government in suits brought either directly against the Company, or which can be defended only by them and their officers.

(c). The course adopted to obviate the natural consequences of the interference of the Supreme Court with the agents of the revenue department, was perhaps the most injudicious which could have been taken; the Advocate General (Sir John Day), taking the Persian words in their literal sense, declared the zemindars to be landholders, and therefore not amenable to the jurisdiction of the Supreme Court; on this the Government acted, and induced the zemindars to plead against the jurisdiction.

(d). On this verbal translation of the term 'zemindar,' a new doctrine was founded and very generally embraced: "the Governor General and his Council were committed in their opinions to vindicate the plea set up against the jurisdiction of the Supreme Court, by admitting that the zemindars were landholders, and held their lands and right by inheritance; and opinions so well calculated to suit the prejudices of the people of England, who were generally unacquainted with the principles of Eastern governments, had a powerful influence in establishing a belief in the new doctrine, and finally overruling the disputed jurisdictions of the Court."

(e). But unfortunately the just claims of the *raees* were altogether forgotten in settling the question of proprietary right; and, strange to say, without evidence, without proof, without investigation, the British legislature have delivered over, as tenants-at-will, millions of free proprietors to the tender mercies of a race of tax-gatherers and speculators, who, though not possessing a foot of land, have been, by a stroke of the pen, converted into exclusive proprietors and seigniorial lords of the Bengal provinces.

13. But though the recognition of the zemindars as landed proprietors was a deliberate act of the Government, yet it was not competent for the Government by that act to transfer or convey to the zemindar any proprietary right

other than what the Government may have possessed. On APP. VI. this subject the author of "Observations on the Law and Constitution of India," &c., wrote as follows:—

USURPATION BY
ZEMINDARS.

Para. 13, contd.

(a). I shall conclude these remarks on the zemindary tenure by quoting the authority of an intelligent native, questioned by Mr. Shore (the present Lord Teignmouth), on the received opinion and custom of India with respect to the right of a zemindar in the soil, and of the sovereign to confer such right. This intelligent person was the son of the former Nazim of Behar. Q.—"How is a zemindar appointed?"

A.—According to the strict right, no person can become the proprietor of land, but by one of the three above-mentioned modes, *viz.*, by purchase, by gift from the proprietor, or by inheritance; though by usage, the emperor or his representative may displace him (a zemindar) for contumacy and refractory behaviour, and appoint another by sunnud in his room. The person so appointed is by usage considered as zemindar and proprietor of the soil, though, according to strict right, he be not so. Q.—"Is a zemindary hereditary?" A.—"Whatever land a zemindar may have become the proprietor of by any one of the three abovementioned modes (*viz.*, purchase, gift, inheritance), descends in the line of inheritance; but whatever is not *actual property*, is consequently not of an hereditary nature" (alluding to his official capacity of zemindar which is not "actual property" doubtless). "If a zemindary be the *actual property* of any person, his heir has an undoubted right to succeed without the sanction of the ruler."

Government
recognition of
land could not
convey any
proprietary
right which
Government
not possess.

(b). Now here it is evident a distinction is intimated between lands the "*actual property*," which may be called the "hereditary" estate, and lands belonging to the zemindary, not "*actual property*." For example, by sunnud from the king, the zemindar might be vested with the management of the revenue of his own hereditary lands, and other lands adjacent, and the charge of the police, &c. (for that was an essential part of a zemindar's duty); also the care of extending the cultivation of waste land, &c.; and it is worthy of remark that, throughout the whole series of answers to Mr. Shore's queries, Gholam Hoseyn invariably keeps this essential distinction in view; though from the questions that great distinction seems to be entirely overlooked by Mr. Shore, who appears to take it for granted that an imperial sunnud is a full title to the actual property of the soil, as it is to the official rights of zemindary.

(c). But a sunnud, firman, or by whatever name a grant from the crown may be called, can convey no right, but what is vested in the sovereign; and that is, the collection of the public revenue: I mean over lands held by cultivators, such as I have defined. And let it be observed that this distinction is marked by the names given to the allowances which Government granted to zemindars, *malikana* and *nankar*, the former meaning the dues belonging to a "*malik*," or real owner of land; the latter to a *manager*. "*Malikana*," says Gholam Hoseyn, "is the unalienable right of ownership; but *nankar* depends upon fidelity, and a due discharge of the public revenue. *Nankar* is expressly the reward of service. If a zemindar is displaced, it would be undoubtedly taken from him. But *malikana* is the right of the proprietor of land, who

APP. VI. receives it (*malikana*) under the rules; and therefore if he receives it (malikana) under the rules, how can an *altumghadar*, *jageerdar*, &c., withhold it from him?

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Para. 13, conclud

(d). There are instances of a sovereign purchasing land from a zemindar. On this point Gholam Hoscyn is asked: Q.—“Why did the king purchase lands, since he was lord of the country, and might therefore have taken by virtue of that capacity?” A.—“The emperor is not so far lord of the soil as to be able, consistently with right and equity, to sell or otherwise dispose of it at his mere will and pleasure. These are rights appertaining only to such a proprietor of land as is mentioned in the first and second answers. The emperor is *proprietor of the revenue*, but he is *not proprietor of the soil*. Hence it is, when he grants *aymas*, *altumgohs*, and *jageers*, he only *transfers the revenue* from himself to the grantee.”

14. Hence there was but too much truth in the remark of the Select Committee of 1812 in the Fifth Report, that—

“the conclusion of the decennial settlement has led to one of the most important measures ever adopted by the East India Company, both in reference to themselves, by fixing the amount of their land revenue in perpetuity, and to the landholders, in establishing and conveying to them rights hitherto unknown and unenjoyed in that country.”

15. There is cold comfort in regarding the character and qualifications of those zemindars in whose favour these unheard-of rights were created.

I.—(a). IDIOTS, OR OF WEAK UNDERSTANDING.

Warren Hastings.—Mr. Francis seems to suppose that there is no necessity for the interposition of Government between the zemindar and the ryot. He observes “that if they are left to themselves, they will soon come to an agreement in which each party will find his advantage.” This would be a just conclusion if the zemindars were all capable of distinguishing what was for their advantage. But it is a fact, which will with difficulty obtain credit in England, though the notoriety will justify me in asserting it here, that much the greatest part of the zemindars, both of Bengal and Behar, are incapable of judging or acting for themselves, being either minors, or men of weak understandings, or absolute idiots.—(WARREN HASTINGS in *Francis’ Revenues of Bengal*, page 153).

(b). Without this article, we should not think a settlement with the zemindar advisable, especially with the great zemindars. They are for the most part ignorant of, or inattentive to, business, and trust to their servants, who defraud or impose upon them.—*Ibid.*, page 12 (*Messrs. Hastings and Barwell*).

II.—IGNORANT AND RAPACIOUS; IGNORANCE BANEFUL TO RYOTS.

(a). SIR J. SHORE, *8th December 1789*.

Report,
73.

It is allowed that the zemindars are, generally speaking, grossly ignorant of their true interests, and of all that relates to their estates;

that the detail of business with their tenants is irregular and confused, exhibiting an intricate scene of collusion, opposed to exaction, and of unlicensed demand substituted for methodised claims; that the rules by which the rents are demanded from the ryots are numerous, arbitrary, and indefinite; that the officers of the Government, possessing local control, are imperfectly acquainted with them, whilst their superiors, further removed from them, have still less information; that the rights of the talookdars, dependent on the zemindars, as well as of the ryots, are imperfectly understood and defined. * * To the truth of this detail there will be no dissenting voice; and it follows from it, that until the variable rules adopted in adjusting the rent of the ryots are simplified and rendered more definite,¹ no solid improvement can be expected from their labours, upon which the prosperity of the country depends (*paragraphs 10 and 11*).

If a review of the zemindars of Bengal were made, it would be found that very few are duly qualified for the management of their hereditary lands, and that in general they are ill-educated for this task, ignorant of the common forms of business, and of the modes of transacting it; inattentive of the conduct of it, even when their own interests are immediately at stake, and indisposed to undertake it. Let a zemindar be asked the simplest questions having any reference to the internal business and state of his zemindary, his replies would probably be the same as if he had never entered it, or he would refer to his dewan or some officer for information (*paragraph 170*).

(b). SIR J. SHORE, *June 1789*.

The ignorance of the zemindars, and their great inattention to the management of the concerns for which they are responsible, is as deplorable as it is universal. * * But the most serious consequences of the ignorance and incapacity of the zemindars are those which affect their ryots. Let the situation of a man in this predicament, at the head of a large zemindary, the management of which is intricate to a degree, be considered. Nothing can be more evident than that he must be exposed to endless frauds and impositions. His head farmers can obtain leases at an under-value, for private considerations paid to the managing officer; or, by the same means, remissions at the close of them. Impositions prevail through all the gradations of renters to the ryots; have proceed alienations of land, unknown to the zemindar or his officers; deductions in the rents of some tenants made up by augmentations on those of others; fabrications and mutilation of accounts, at the end of a lease; fraudulent concealment for temporary stipulations; the perpetual introduction of new taxes; conciliatory remissions at the commencement of a lease; and arbitrary impositions at the expiration of it, with the endless catalogue of abuses which perplex mortals' accounts, and render a remedy difficult. * * I have assigned to incapacity and want of application in the zemindars, what has been attributed to worse motives; but this I believe is certain, that whatever their follies or vices may be, they are themselves the principal sufferers. It is not from profusion, or from the

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CHARACTER OF
THE ORIGINAL
ZEMINDARS.

Para. 16, contd.

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¹ Not done to this day.

APP. VI. exorbitancy of the demands of Government that they are generally at this time poor and in debt; ignorance and inactivity have loaded them with the responsibility of discharging obligations which they might, perhaps, with moderate abilities and attention have avoided. * * To those who have been used to consider the zemindars as versed in all the functions of their situation and trusts; as possessing an intimate knowledge of their tenants and an immediate connection with them, as animated with a regard for the prosperity of their estates¹, and as faithful exeeutors of the public duties, these remarks will appear extraordinary. They are the result of my own experience, combined with that of others; and I fear no refutation of them, where they are examined with candour, and can be ascertained by local reference and information (*paragraphs 173, 178, and 192*).

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 WORKLESS
 CHARACTER OF
 THE ORIGINAL
 ZEMINDARS.
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Para. 15, contd.

III.—POOR CREATURES SUNK IN SLOTH AND DEBAUCHERY.

MR. R. D. MANGLES, *31st March 1848*.

Sess. 1847-48,
 Vol 9
 Questions 3329
 and 3330.

The Committee no doubt know that a great many of the permanently settled estates changed hands shortly after the permanent settlement from sale. I do not believe that that resulted in a majority of instances from over-assessment, but from incapacity on the part of the landowners; and it must be admitted that we made regulations for the protection of the ryots which prevented the zemindars very often from collecting the rent from them. (*Question*)—You mean incapacity to manage a landed estate? Yes: the landholders in general were a miserable imbecile set; the Rajah of Burdwan is almost the only instance of a great family who have kept their estates—enormous estates—together; the majority of the great landholders were not men of business, fit for the management of their own affairs, but poor creatures brought up in the women's apartments, and sunk in sloth and debauchery.

IV.—EXTRAVAGANT.

(a), MR. J. MILL, *9th August 1831*.

Joint
 Committee
 1831-32,
 Questions 3341-
 45, 974.

To a very great degree the original possessors in Bengal have, from their own improvidence and other causes lost their estates. Few of the old zemindars now exist. The men who now hold the property are not resident; they are capitalists who reside in the towns, and manage by their agents.

Q.—Are not these evils owing to the circumstance of the zemindars being defective in their personal character, and not the best qualified? or are they part of the system? They are not saving men, and I think that may be predicated generally of the persons that live upon rent. I know no country in which the class of men whose income is derived from

¹ These were natural inferences from the assumption of the proprietary right of the zemindars. The facts and experience of Sir John Shore having discredited the inferences, the assumption of the zemindar's proprietary right was equally discredited and destroyed.

rent can be considered as accumulators; they are men who spend their incomes, with a very moderate portion of exceptions. * * I think, in general, the persons who own rent and live upon rent consume it all: that is the rule almost universally with them in India, and very generally, I believe, elsewhere.

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WORTHLESS
CHARACTER OF
THE ORIGINAL
ZEMINDARS.

Para. 15, contd.

V.—NECESSITOUS ZEMINDARS.

(a). LORD CORNWALLIS, *3rd February 1790.*

I am sorry to be obliged to acknowledge, but it is a truth too evident to deny, that the land proprietors, throughout the whole of the Company's provinces, are in a general state of poverty and depression.

Fifth Report,
page 493.

(b). MR. J. MILL, *19th August 1831.*

Supposing a zemindar to be involved in necessities, will he not be tempted thereby to endeavour to relieve those necessities by extracting the largest possible payment from the ryots? I believe he almost invariably does so: there are exceptions of benevolent zemindars, but I believe they are very rare.

Third Report,
Select
Committee,
1831-32,
Q. 3916.

VI.—MORE PLAGUE THAN PROFIT.

(a). MR. J. MILL, *4th August 1831.*

Q. 3211.—Are the greater proportion of the zemindars resident upon their zemindaries? I believe a very considerable proportion of them are non-resident; they are rich natives who live about Calcutta.

Q. 3212.—Therefore the experiment of creating a landed gentry in India by means of the zemindary settlement may be considered to have entirely failed? I so consider it.

Q. 3213.—Have the zemindars been in any way useful in the administration of justice or police? In general quite the contrary: it has been found in cases in which the police of their districts was assigned to them that it was a source of perpetual abuse, and in almost all cases it was taken away.

(b). MR. HOLT MACKENZIE, *18th April 1832.*

Q. 2631.—The only difference is, that if there had been a ryotwar instead of a zemindary settlement in Bengal, the persons now living upon profit-rent would not have existed. Do they exercise a beneficial influence in Bengal, or otherwise? I think very little. Indeed, I am not aware of their being of any use; and although it is of use then should be persons in all countries who accumulate money, I am disposed to think that the aggregate accumulation might have been greater than it is, and that the mass of the people would have been happier.

I. VII.—OBSTRUCTIVE ZEMINDARS.

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Mr. HOLT MACKENZIE, *18th April 1832.*

Q.—Are the zemindars a class of persons who assist to uphold the Government, or do they embarrass the Government? I am not aware of their doing anything directly to uphold the Government; the indirect effect of a large body interested in maintaining the existing state of things may be considerable. But they still generally, I fear, dislike and fear us; and they certainly embarrass the Government whenever they think their own interests are likely to be affected by its acts. Thus they are very much averse to any inquiries into their collections from their tenants, and set themselves to baffle the Government in all attempts made to discover the actual condition and rights of the great body of the people, though such attempts be professedly and actually directed to the better administration of justice. They appear to have been very successful in their resistance to all such measures, and so far have been, I think, very mischievous. Q. They stand between the Government and the people, so as to prevent the Government coming in actual contact with the real cultivators of the land? Yes. Q. And that to the disadvantage of the community at large? Yes, I think so; and even to their own disadvantage.

16. Respecting the fitness of zemindars for the exercise of police powers, Mr. Mill wrote in his *History of India*, Book VI, chapter 6, as follows:—

(a). One thing recommended for correcting the defective provision by Lord Cornwallis for the administration of penal justice was to re-invest the zemindars with powers of police; and among the interrogatories circulated by Government in 1801, the opinion of the Judges was asked on “the expediency of granting to zemindars, farmers, and other persons of character, commissions empowering them to act as justices of the peace.” Among the most intelligent of the Company’s servants, one opinion on this subject seems alone to exist. “I am persuaded,” says the Magistrate of Burdwan, “that to vest the zemindars and farmers of this district with the powers proposed, would not only prove nugatory for the objects intended, but be highly detrimental to the country, and destructive of the peace of the inhabitants. Few of the zemindars and farmers of any respectability reside on their estates and farms. Allow them to exercise a power equal to the purposes, and to vest with it by delegation, their agents or under-farmers, the worst and most mischievous consequences are to be apprehended from their abuse of it.” On this occasion the Magistrates of the 24-Pergunnahs say—“From the general character of the zemindars, farmers, and other inhabitants of the districts, we do not think that it would be advisable to vest any of them with the powers of justices of the peace. On the contrary, we are of opinion that such a measure, so far from being in any way beneficial to the police of the district, would be a source of great oppression to the lower class of the inhabitants, and of innumerable complaints to the magistrate.”

(b). They add—“We have reason to believe, though it is difficult to establish proof against them, that the zemindars, not only in many

instances, encourage and harbour dacoits, but frequently partake of the property plundered by them. The *choukidars* and *pikes* employed by them are concerned in almost every dacoity committed in the districts subject to our jurisdiction."

(c). To the same purport, the Judge of Circuit in the Rajshahiye Division says, in 1808: "My informants attributed the success of the dacoits to the same cause that every body else does, namely, the protection given them by the zemindars and police officers, and other people of power and influence in the country. Every thing I see, and hear, and read on this subject, serves to convince me of the truth of this statement." * *

(d). The Judge of Circuit in the Benares Division in 1808, discants with great warmth upon the same topic, the extreme difficulty of maintaining order in any country without the assistance of a superior class of inhabitants incorporated with the people, and possessing that influence which superior property and education confer, over others deprived of those advantages: "In maintaining this opinion, I may" says he, "unless I greatly deceive myself, appeal to the general practice of almost all nations, originating doubtless, in circumstances and feelings common to all mankind. The natural mode of managing men is to employ the agency of those whom, from the relation in which they stand to them, they regard with respect and confidence. Accordingly, all governments seem to have made the authority of these native leaders the basis of their police; and any hired police establishment which they maintain are not intended to supersede the native police, but to superintend, and watch its efforts. To take an example with which we are all familiar. In our own country we all know what services society contributes to its own protection. We know how much vigour is conferred on its police by the support which it receives from native gentry, from respectable landholders, from the corporations in towns, and from substantial persons of the middle class in the villages. We can form some conception of the mischief which would ensue if that support should be withdrawn, and an attempt made to compensate it by positive laws and artificial institutions."

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Para. 18.

VIII. - GENERAL CHARACTER OF THE WHOLE BODY.

SIR J. SHORE, *June 1789.*

If the real capacity of the zemindars were taken as a rule for determining the selection of them for employment, it is evident that they must be in general excluded.

17. The zemindars give as little help to the police in the present day, as they rendered to it in 1808; and the only resemblance which Lord Cornwallis succeeded in establishing between the zemindars of his creation and the landed proprietors in England is in the large incomes which a few of the former have acquired.

18. Summing up the information in this Appendix, it appears that the zemindary was an office for the

APP. VI. police, and general administration of the area comprised in the zemindary. This is evident from various incidents which attached to the office. Thus—

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 WORTHLESS
 CHARACTER OF
 THE ORIGINAL
 ZEMINDARS.

Para. 18, contd.

(a). The zemindar's liability to dismissal.
 (b). The exclusion of incompetent zemindars.
 (c). The disqualification of a zemindar to transfer or sell the zemindary without the sanction of Government.

(d). The exceeding largeness of several zemindaries, and the history of their growth, showed that they were not acquired by purchase or inheritance.

(e). The hereditary succession to a zemindary showed that it was an office, for, by Hindu and Mohamedan law alike, real property is equally divided among children.

(f). And even hereditary succession was not effectual without great difficulty and expense to the heir; and while the tenth of the Government revenue thus acquired represented adequately the zemindar's remuneration, it fell far short of a proprietor's income from his own lands.

(g). Two other circumstances attested in a marked manner the purely official character of a zemindar, *viz.*, the appointment of canoongoes and putwarries to check the zemindars' proceedings and collections, as a protection to the ryots, and the levy of transit dues by zemindars, dues which were leviable in only their official character.

II.—In addition to these considerations, the zemindars' sunnud, the instructions of Aurungzebe to collectors of revenue, and the testimony of various authorities, attest the purely official character of the zemindars, who used their influence and authority to encroach on the rights and the property of the village communities and their headmen.

III.—The recognition by Government of proprietary rights in official zemindars, as such, was prompted by a desire to evade a jurisdiction which the Supreme Court in Calcutta asserted over the zemindars as officers of Government. But as the Government were not the proprietors of the soil, their recognition of the zemindars as proprietors could extend no farther than to a property in the revenue which belonged to Government. Even had the rights of the Government been those of conquerors, this, according to universal law and usage, would have been the extent and limit of transfer of proprietary rights to the zemindars; but the Government were not acting then as conquerors, but simply as dewans for the management of the revenues of Bengal, Behar, and Orissa. Not the Local Government, nor the East India

Company, nor Parliament, had the right, in law; to transfer proprietary right to zemindars, from the millions of cultivating proprietors to whom the right really belonged. Accordingly, in Regulation I of 1793, the term 'proprietor' is used in this restricted sense, inasmuch as only those who paid revenue direct to Government were recognised in that Regulation as proprietors; but, in practice, this meaning, like the cruelly good intentions of the authors of the permanent settlement, was forgotten.

APP. VI.
—
WORTHLESS
CHARACTER OF
ORIGINAL ZEMIN-
DARS.
—
Para. 18, contd.

IV.—The Select Committee of 1812 were constrained to record in their Fifth Report that the East India Company had conveyed to zemindars "rights hitherto unknown and unenjoyed in" Bengal; and they placed on record unimpeachable testimony that the persons in whose favour the proprietary rights of millions had been confiscated were worthless characters, as being—

- a. (Many of them), idiots, or of weak understanding.
- b. (Another large number), poor creatures sunk in sloth and debauchery.
- c. Extravagant, necessitous, and therefore exacting.
- d. (Including managers of the estates of a, b and c) ignorant and rapacious; harbourers of dacoits.
- e. Obstructive zemindars, more plague than profit.

V.—Parliament knew these things, but did not correct them, though vested interests in abuses, oppression and wrong, which somehow are supposed to be hallowed by time, had not had time to establish themselves.

APPENDIX VII.

APP. VII.

ZEMINDARS AFTER THE PERMANENT SETTLEMENT.

CLASSES OF
ZEMINDARS.

1. CLASSES OF ZEMINDARS.

MR. HOLT MACKENZIE 1832.

Sess. 1831-32,
Vol. XI, pages
305 to 307.

I. The only two classes that have a permanent title of property, independently of grant from, or engagement with, the Government, are—
a.—The fixed occupants of fields, *i. e.*, those by whom, or at whose risk and charge, land is tilled, and its fruits gathered, and who cannot be justly ousted so long as they pay the amount or value demandable from them within a limit determined on certain fixed principles.

b.—Communities of cultivating zemindars (commonly called biswadars or coparcenary occupants of villages) who assert, as colonists or conquerors, a property, several or common, in the lands lying within defined boundaries, whether cultivated or waste, subject in certain cases to the rights of the preceding class. From these they are distinguished chiefly by this, that, besides a fixed title of occupancy in the fields actually cultivated by them, they have a right, corporate or several, in all lands lying within a specific division of territory, not appropriated to the use of others, and in the actual or reversionary advantages derivable from occupied land, not taken by Government to itself, nor specifically admitted to belong to others; *in other words, a right in all waste lands within the village boundary, and in all land cultivated by pykasht ryots or other than fixed occupancy ryots.*

II. There are several others who have obtained a valuable property in the produce of the land, either as contractors for or assignees of the Government or revenue, through grants, concessions or engagements of our own and former Governments, but I need not specify them.

a.—I shall only remark that the zemindars of Bengal, though many of them originally held a mere office, must be considered as having been vested by our settlement with the property of everything within their zemindaries which belonged to the Government, and was not reserved by it; and inasmuch as the coparcenary rights, which I have above endeavoured to describe, do not seem to have belonged to any among the village communities in Lower Bengal, where, as in the Northern Circars, the unoccupied lands and reversionary interests appear to have belonged to the Government, they may now, in point of right to those lands, be classed with the biswadars.

b.—It may be useful to explain that though I consider the zemindars, as the assignees of Government, to have possessed the right of disposing of unoccupied land, yet if the khodkhast ryots have, without special agreement, occupied such land, I would by no means infer that they are, even with regard to such lands, mere tenants-at-will. And I am not sure whether we are quite justified in denying to the village communities

of Bengal Proper, the biswa right (*to waste*) asserted and maintained by the sturdier men of the west. APP. VII.

c.—The rights of the zemindars, as collectors of the Government rent or revenue chargeable upon land occupied by others, stand of course upon a different footing. These must be interpreted with reference to the claims of others, since Government cannot be understood tacitly to have transferred to its contractors properties belonging to third parties; and its declarations, as far as they go, are all directed to the point of maintaining these properties, however insufficient they have proved for the full attainment of that object. CLASSES OF ZEMINDARS.
Para. 1, contd.

d.—Even in unsettled countries, it would be held tyrannical to disregard long-established usage; and it is, I think, quite clear that in the permanently settled districts, the Government engagees were bound by their contract to maintain, with certain specified exceptions, the rules and usages existing at the time the settlement was made. Hence, in defining their interests in the produce of lands owned by others, we must, of course, look minutely to local circumstances, which cannot be explained in any general treatise.

III. (a).—The above explanation of the character of the several classes of occupants, enables one to arrange the contractors also in three great divisions:

1st, persons who possess the full biswa right in the part of which they collect the revenue;

2nd, persons possessing a share in the biswa right, and acting in the collection of the revenue as the representatives of other co-proprietors.

3rd, persons collecting the revenue of villages of which the biswa right belongs wholly to others or to Government.

b.—Under the first division we may now place most of the zemindars of Bengal, deriving their biswa interest from the act of our Government. And there are also to be found in other provinces, cases in which the biswadars of villages, or other parts, holding by succession or purchase from the original settlers, colonists, or conquerors, are single; or, if many, are all admitted to share equally in the advantage and responsibility of the engagement with Government, and equally to see the function of collection. To this class, most of the persons who have purchased villages sold for the recovery of arrears of revenue, and several of the great talookdars or hereditary revenue farmers, claim to belong.

c.—Under the second division come the managing or headmen of village communities, prevalent in Behar, Benares, and the Western Provinces, of whom, though some claim an hereditary title in the post, all may apparently be held to fall under the designation of representatives. The freedom and mode of election is a separate thing.

d.—The third division includes many rajahs, talookdars, and zemindars, collecting the revenue of extensive parts, of which the villages are occupied by other persons possessed of the biswa right. And although such contractors may be the biswadars of some villages, the circumstance does not (supposing a settlement by villages with defined limits) require or justify a further sub-division of the class in question.

IV. If the distinction between the rights that attach to occupancy of land (as I have defined it) and those which are incident to the collection, or assignment, of the Government revenue, be steadily kept in view.

APP. VII. with advertence to the classification I have above endeavoured to sketch, it seems to me that there cannot be much difficulty in determining accurately the general nature of the interests belonging to all classes, in so far as they can be determined without the ascertainment, village by village, and field by field, of the claims of individuals.

CLASSES OF ZEMINDARS.

Para. I, contd.

V. Where any one shall have established by prescription, under preceding Governments, or gained by stipulation from ours, the right of collecting the public dues, with a beneficial interest, immediate or contingent, of which it would be unjust to divest him except for sufficient cause, or without adequate compensation, such claims will, of course, require to be considered before we proceed to collect from all the occupants or from those who are also biswadars. But when once the character of such claims is defined, they will not hinder the adoption of any arrangement that may be best for the public good, if it be found in the compulsory surrender of such intermediate titles, a measure not lightly to be resolved upon.

VI. On the other hand, when any class, whether biswadars or not, are maintained in the practical exercise of a right of hereditary management over lands occupied by others, such right, its nature being distinctly ascertained, may easily be rendered consistent with the just claims of all other classes. The mischief hitherto done has arisen from the practice of employing the term proprietor, without defining the nature of the property: and from overlooking the fact that several distinct properties may very well attach to a single subject-matter.

2. The statement in the last three sections in the preceding paragraph, that the rights which the Government bestowed upon zemindars in the zemindary settlement in no way affected or derogated from the rights which ryots possessed independently of official sanction, is borne out by the reservation of ryots' rights in the sanction accorded by the Court of Directors to the Permanent Settlement, and by the following extracts.

I. LORD CORNWALLIS, *3rd February 1790*.

Fifth Report,
page 486.

a.—I agree with Mr. Shore, that some interference on the part of Government is undoubtedly necessary for effecting an adjustment of the demands of the zemindars upon the ryots; nor do I conceive that the former will take alarm at the reservation of this right of interference, when convinced that Government can have no interest in exercising it, but for the purposes of public justice. Were the Government itself to be a party in the cause, they might have some grounds for apprehending the result of its decisions.

b.—Mr. Shore observes that this interference is inconsistent with proprietary right: that it is an encroachment upon it to prohibit a landlord from imposing taxes on his tenant; for it is saying to him that he shall not raise the rents of his estates; and that if the land is the zemindar's, it will be only partially his property, whilst we prescribe the

quantum which he is to collect, or the mode by which the adjustment is to take place between the parties concerned.

APP. VII.

c.—If Mr. Shore means that after having declared the zemindar proprietor of the soil, in order to be consistent we have no right to prevent his imposing new abwabs or taxes on the lands in cultivation, I must differ with him in opinion, unless we suppose the ryots to be absolute slaves of the zemindars: every beegha of land possessed by them must have been cultivated under an expressed or implied agreement that a certain sum should be paid for each beegha of produce and no more. Every abwab, or tax, imposed by the zemindar over and above that sum is not only a breach of that agreement, but a direct violation of the established laws of the country. The cultivator, therefore, has in such case an undoubted right to apply to Government for the protection of his property; and Government is at all times bound to afford him redress. I do not hesitate, therefore, to give it as my opinion, that the zemindars, neither now nor ever, could possess a right to impose taxes or abwabs upon the ryots; and if from the confusion which prevailed towards the close of the Mogul Government, or neglect, or want of information, since we have had the possession of the country, new abwabs have been imposed by the zemindars or farmers, the Government has an undoubted right to abolish such as are oppressive, and have never been confirmed by a competent authority; and to establish such regulations as may prevent the practice of like abuses in future.

RYOTS' RIGHTS
RESERVED.

Para. 2, contd.

d.—Neither is the privilege which the ryots in many parts of Bengal enjoy of holding possession of the spots of land which they cultivate, so long as they pay the revenue assessed upon them, by any means incompatible with the proprietary rights of the zemindars. Whoever cultivates the land, the zemindars can receive no more¹ than the established rent which in most cases is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another, would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit. The practice that prevailed under the Mogul Government, of uniting many districts into one zemindary, and thereby subjecting a large body of people to the control of one principal zemindar, rendered some restriction of this nature absolutely necessary. The zemindar, however, may sell the land, and the cultivator must pay the rent to the purchaser.

Page 187.

II. LORD CORNWALLIS, 18th September 1789.

a.—I am also convinced that failing the claim of right of the zemindars (*as against the Government*), it would be necessary for the public good to grant a right of property in the soil to them, or to persons of other descriptions. I think it unnecessary² to enter into any discussion of the grounds upon which their right appears to have been founded.

Fifth Report.
Page 173.

¹ Here the author of the permanent settlement either ignored the distinction between khodkhas and pykhasts, or relied upon what was fact at the time, *viz.*, that the pergunnah rates, or those paid by khodkhas ryots, were higher than the rates paid by pykhasts. The facts are now all the other way, and Lord Cornwallis' benevolent conclusions have been all upset and are topsy-turvy.

² Where the Government was prepared to surrender its own right to the zemindar, discussion of his right was unnecessary; but where the surrender of ryots' rights was involved, discussion of the zemindar's rights was imperative.

APP. VII.

RYOTS' RIGHTS,
RESERVED.

Para. 2, contd.

b.—I understand the word permanency to extend only to the jumma, and not to the details of the settlement; for many regulations will certainly be hereafter necessary for the further security of the ryots in particular, and even of those talookdars who, to my concern, must still remain in some degree of dependence on the zemindars. * * I cannot, however, admit that such regulations can, in any degree, affect the rights which it is now proposed to confirm to the zemindars, for I never will allow that in any country Government can be said to invade the rights of a subject, when they only require, for the benefit of the State, that he shall accept of a reasonable equivalent for the surrender of a real or supposed right, which in his hands is detrimental to the general interest of the public; or when they prevent his committing cruel oppressions upon his neighbours or upon his own dependents.

III. MR. HODGSON, MEMBER OF THE BOARD OF REVENUE, MADRAS, 28th March 1808.

Fifth Report.
Page 977.

When a zemindary settlement in Dindigal was discussed in 1800, it was not known, and, I regret to say, is not now generally admitted, that two rights could, under the words "proprietary right" in the Regulations, exist; that the cultivators could possess one right, and the zemindars another; yet both be distinct rights. It was argued that the words "proprietary right" so frequently used in the regulations, and so formally confirmed by Sunnud Milkeent Istemrar on all zemindars, hereditary or by purchase, was an unlimited right; that is, an undefined power, or a power to be exercised according to the discretion of the proprietor, over all the land of the zemindary or estate. It is declared to be inconsistent with "proprietary right" that the proprietor should be guided by any other rule than his own will, in demanding his rent; and emigration, under this interpretation, is admitted to be the only relief from an excessive rent. This mode of reasoning would not, perhaps, have gained so much ground if it had been within the means of all to have obtained the perusal of the interesting discussions on the subject between the Right Honourable Marquis Cornwallis and Sir John Shore, the Bengal Regulations, and the proceedings of the Board at Madras, on proposing the introduction of the permanent system. It could have been distinctly seen from those documents that the first principle of the permanent settlement was to confirm and secure the rights of the cultivators of the soil. *To confirm and secure* are the terms which must be used, because no new rights were granted, or any doubt entertained upon the following leading features of their right, viz. :—

1st.—That no zemindar, proprietor (or whatever name be given to those persons), was entitled by law, custom, or usage, to make his demands for rent according to his convenience; or in other words;

2nd.—That the cultivators of the soil had the solid right, from time immemorial, of paying a defined rent and no more, for the land they cultivated. This right is inherent in all the cultivators from the most northern parts of India to Cape Comorin.

3rd.—The "proprietary right" of zemindars, in the Regulations is therefore no more than the right to collect from the cultivators that rent

which custom has established as the right of Government; and the benefit arising from this right is confined, *first*, to an extension of the amount, not of the rate, of the customary rent by an increase of cultivation; *secondly*, to a profit in dealings in grain, where the rent may be rendered in kind; *thirdly*, to a change from an inferior to a superior kind of culture, arising out of a mutual understanding of their interest between the cultivator and proprietor.

APP. VII.

ONLY THE REVENUE WAS PERMANENTLY SETTLED.

Para. 2, contd.

IV. MR. N. J. HALHED, 1832.

In the discussions which eventually led to the permanent settlement of the revenue in Bengal, Behar, Orissa, and Benares, the interests of the agriculturists were entirely forgotten; it appears from the minutes of Council that the point mooted was simply, whether the property in the soil vested in the sovereign or in the zemindar, or contractor for the revenue; and the question was set at rest by declaring the proprietary rights in the *estates*, or jurisdictions for the revenue of which they had contracted to pay, to belong to the latter.

Page 91.

V. TAGORE LAW LECTURES, 1874-75.

These extracts show in what light the zemindars were regarded before the decennial settlement, and that the question was considered mainly with reference to the matter then in hand—a more or less permanent settlement of the revenue. The conclusion arrived at was that the zemindars in Bengal were the proper persons to be settled with, inasmuch as they had long enjoyed the right to such settlement; and had acquired, if they did not originally possess, a proprietary right in the land, the extent of which it was unnecessary to discuss further than to ascertain that it justified a permanent settlement with them as the nearest approach to an English holder in fee-simple, and as the most likely class to develop into the English landlord (*see* next two extracts).

Page 232.

VI. HARRINGTON'S ANALYSIS OF THE REGULATIONS.

If by the terms *proprietor of land*, and *actual proprietor of the soil*, be meant a landholder possessing the full rights of an English landlord, or freeholder in fee-simple, with equal liberty to dispose of all the lands forming part of his estate as he may think most for his own advantage, to oust his tenants, whether for life or for a term of years, on the termination of their respective leaseholds, and to advance their rents on the expiration of leases at his discretion; such a designation, it may be admitted, is not strictly and correctly applicable to a Bengal *zemindar*, who does not possess so unlimited a power over the *khodkhast* ryots, and other descriptions of under-tenants possessing, as well as himself, certain rights and interests in the lands which constitute his zemindary.

Page 222.

APP. VII. VII. MR. FORTESCUE, CIVIL COMMISSIONER OF DELHI, FORMERLY IN HIGH
REVENUE OFFICES IN LOWER BENGAL, 12th April 1832.

Sess. 1831-32,
Vol. XI.

Para. 2, contd.

a.—Q. 2290.—Do not you understand that the effect of the permanent settlement has been to vest in the zemindar a nominal property in the soil? Neither the spirit of the Regulations, nor the minutes recorded anterior to them, meant to convey any right which should injure the subordinate holders.

Question 2303.

b.—Neither the intention of the Government, nor the spirit of the Regulations, went to give any right to the zemindar that was to interfere with subordinate rights; next I would say, that had the rates by which the ryots were formerly liable to be assessed been recorded at the permanent settlement, and fixed, the value of the rights of the ryots would ere this day have been very considerable, and would have rendered them secure and comfortable. Such rates, in some instances, were recorded, and have been appealed to; and, if my recollection is correct, are to be found inserted in some of the ryots' pottahs.

c.—Q. 2312.—The Committee have been informed that whatever the theory and principle may be, practically the rights of the ryots have pretty much ceased in the Lower Provinces; is that so? Yes; but not, however, by formal act of the Legislature. An unrestrained practice, convenient indeed, perhaps, has grown up at variance with principle; but that is no reason for perpetuating the injustice.

Q. 2313.—Does it not appear to be an inevitable consequence of the Regulations? I do not see that it should have been, or continue to be; it was certainly not their principle. A person fairly studying the sense and spirit of the Regulations, and knowing their objects, could not say that it was competent for the Courts to deny that the ryots had rights.

Q. 2314.—Supposing that you make the zemindar responsible to Government, assuming a power of compulsion over him, and find it necessary also to communicate the same power of compulsion to him, over the actual cultivator of the land, does it not constitute him, to all intents and purposes, their landholder? No, I think not; the Government itself could give no more than it had, that is, its entire interest as far as it went, but no further; and the practice of all the preceding Governments, whether under settlements by Akbar, Turee Mul, or others, was that the arrangements for the revenue were formed with reference to ryots' rights. The term is constantly made use of, "*hug ereyaea*," or "rights of the ryots." In the grants of former Governments, declarations and stipulations are made to secure that "*hug*" or right; therefore if such terms are made use of, they must have had reference to some right.

3. It has been seen (paragraph 2, section II b) that Lord Cornwallis disallowed the zemindar's right, under the contemplated permanent settlement, to increase the rate of rent for the ryot's usual cultivation. The sources from which the zemindar's income was to increase, despite this limitation of

the demand upon the ryot, were thus indicated in his Lordship's minute dated 3rd February 1790:—

I. Neither is prohibiting the landholder to impose new *abwabs* or taxes on the lands in cultivation tantamount to saying to him that he shall not raise the rents of his estates. The rents of an estate are not to be raised by the imposition of new *abwabs* or taxes on every beegah of land in cultivation. * * No zemindar claims a right to impose new taxes on the land in cultivation; although it is obvious that they have clandestinely levied them when pressed to answer demands upon themselves; and that these taxes have, from various causes, been perpetuated to the ultimate detriment of the proprietor who imposed them.

II. The rents of an estate can only be raised—

a—by inducing the ryots to cultivate the more valuable articles of produce;

b—by inducing them to clear the extensive tracts of waste land which are to be found in almost every zemindary in Bengal.

4. It appears from the preceding section I, that, in the opinion of Lord Cornwallis, no zemindar was entitled to enhance the rent of old lands in cultivation beyond the per-gunnah rate. All *abwabs* in excess of that rate were illegal and oppressive: and in allowing the consolidation of existing *abwabs* with the per-gunnah rate, he was justified in prohibiting fresh *abwabs*. Lord Cornwallis did not overlook that existing *abwabs* were partly extra cesses imposed on account of a rise of prices; but as he exempted zemindars from increase of assessment on account of a rise of prices, that contingency was disregarded in prohibiting fresh *abwabs*. It further appears from *a* and *b* of the preceding section II, that the only contemplated sources of increased collections from ryots were from new lands, and from a better kind of produce from lands already under cultivation. Thus an increase of the ryots' rent from a general rise of prices of the old kinds of produce was not contemplated. The exclusion of this from the possible sources of increased revenue was not inadvertent—it was intentional; for the noble Lord had, in a previous paragraph of his minute, protected the zemindar from any increase of the per-gunnah rate by the Government, on account of any such rise of prices.

Thus “equally favourable to the zemindar as the prohibition in the value of silver; for, if the value of silver were to continue to fall, as it has done, the quantity drawn from the mines would increase. If this be admitted, the zemindar would be lighter, because, as the value of silver falls, he would be able, upon an average, to pay less to the Government for the produce of his land.”

SOURCES OF IN-
CREASE OF
ZEMINDAR'S IN-
COME.

Para. 1.
Fifth Report,
Page 437.

APP. VII.

RYOTS' RENT
NOT TO BE
ENHANCED.

Para. 4, contd.

Here the intention clearly was that the cultivating proprietor of land should benefit by a rise of prices of the produce of his land. But the Regulations of 1793 having restricted the term proprietor to those who engaged with the Government for the Government revenue from land, the right in the unearned increment was erroneously transferred to the latter, as regards all except khodkasht ryots, under a rule of assessment which was introduced for the first time by Act X of 1859. Sir J. Shore actually proposed that not only the rate, but the amount of the ryots' rent, should be fixed, and such a fixing of the amount was incompatible with any subsequent increase of rent from a rise of prices.

5. Nor was ryots' rent to be increased by *abwabs*.

I. SIR J. SHORE, *June 1789*.

a.—The *abwab subahdary*, or vicerojal imposts, which constitute the increase since 1728, enhanced the rates upon the ryots. They were in general levied upon the standard assessment in certain proportions to its amount, and the zemindars who paid them were authorised to collect them from their ryots in the same proportions to their respective quotas of rent. * * Jaffier Khan was the author of this innovation, the consequences of which he did not foresee. The tax imposed by him, which established the precedent, was trifling in its amount, and apparently intended as a fee to the king's officers (*paragraphs 33 and 34*).

b.—Long before the time of Jaffier Khan, impositions under various denominations, and to a very considerable amount, had been levied from the ryots beyond the tumar, or standard assessment. In many places they had been consolidated into the assul, and a new standard had been assumed as the basis of succeeding impositions (*paragraph 37*).

c.—The imposition of these cesses is generally discretionary (with the subahdar); they differ in names, number, and amount throughout the country; their rates are variously regulated, at so much per rupee, or according to the number of months, and by other distinctions. The proportion of each is not calculated upon the assul only, but generally upon the aggregate of that and the preceding cesses, and so on progressively (*paragraph 223*).

d.—In every district throughout Bengal, where the license of exaction has not superseded all rule, the rents of the land are regulated by known rates called *Nirk*, and in some districts each village has its own; these rates are formed, with respect to the produce of the land, at so much per beegah; some soil produces two crops in a year of different species, some three; the more profitable articles, such as the mulberry plant, betel leaf, tobacco, sugarcane, and others, render the value of the land proportionably great. These rates must have been fixed upon a measurement of the land, and the settlement of Turee Mull may have furnished the basis of them. In the course of time, cesses were super-added to the standard, and became included in a subsequent valuation,

the rates varying with every succeeding measurement. At present, there are many *abwabs* or cesses collected distinct from the *nerrik* and not included in it, although they are levied in certain proportions to it (*paragraphs 391 and 392*).

e.—The leading principles upon which I shall ground my propositions are two : *first*, the security of Government with respect to its revenues ; *second*, the security and protection of its subjects. The former will be best established by concluding a permanent settlement with the zemindars or proprietors of the soil ; the land, their property, is the security to Government. The second must be ensured by carrying into practice, as far as possible, an acknowledged maxim of taxation, *viz.*, that the tax which each individual is bound to pay ought to be certain, and not arbitrary.¹ The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor and every other person (*paragraphs 456 to 460*).

APP. VII.

RYOTS' RENT
NOT TO BE
ENHANCED.

Para. 5, contd.

II. SIR J. SHORE, 8th December 1789.

a.—Notwithstanding repeated prohibitions against the introduction of new taxes, we still found that many have been established of late years. The idea of the imposition of taxes by a landlord upon his tenant implies an inconsistency ; and the prohibition in spirit is an encroachment upon proprietary right ; for it is saying to the landlord, you shall not raise the rents of your estate.² But without expatiating on this part of the argument, I shall only here observe, that with an exception of arbitrary limitation in favour of the khodkhast ryots, the Regulations for the new settlement virtually confirm all these taxes, without our possessing any records of them, and without knowing how far they are burthensome or otherwise. * * At present they are in many places so numerous and complicated, that after having obtained an enumeration of the whole, the amount of the assul, with the proportionate rates of the several *abwabs*, it requires an accountant of some ability to calculate what a ryot is to pay, and the calculation may be presumed to be beyond the ability of most tenants. The pottah rarely expresses the sum total of the rents ; and it is difficult to determine what is extortion (*paragraph 16*).

b.—The necessity of prescribing regulations for simplifying the complicated rentals of the ryots (which ought, if possible, to be reduced to one sum for a given quantity of land of a determinate quality and produce),³ of defining and establishing the rights of the ryots and talookdars with precision, together with the expediency of procuring clear data for the transfer by sale of public and private property, are admitted (*paragraph 19*).

¹ This was a clear intimation that the ryot's rent was to be certain, that is, definitely fixed. The amount being fixed, it could not be increased from a rise of price.

² This inconsistency, which attaches only to the theory that the zemindar was proprietor, and not an official collector, should have shown Sir. J. Shore that the zemindar was not the proprietor.

³ The amount of a rent fixed on these data would not be liable to reduction with a fall, or to increase with a rise, of prices.

APP. VII. III. LORD CORNWALLIS, *3rd February 1790.*

RYOTS' RENTS
NOT TO BE
ENHANCED.

Para. 5, contd.

Fifth Report,
page 486.

This is a distinct
affirmation that
the *amount*
payable by the
ryot was to be
fixed; in other
words, it could
not be enhanced
from a rise of
prices.

Sess. 1831-32,
Vol. XI. page
20, of App.
No. 6.

Mr. Shore's proposition that the rents of the ryots, by whatever rule or custom they may be demanded, shall be specific as to their amount; that the landholders shall be obliged, within a certain time, to grant pottahs or writings to their ryots, in which the amount shall be inserted, and that no ryot shall be liable to pay more than the sum actually specified in his pottah—if duly enforced by the collectors—will soon obviate the objection to a fixed assessment, founded upon the undefined state of the demands of the landholders upon the ryots.

IV. MR. A. D. CAMPBELL.

It had been proposed by Lord Teignmouth, in Bengal, to fix the maximum rates of the public revenue payable by the cultivators to the zemindar at those actually assessed when the permanent settlement was introduced, which, though confirming existing illegal cesses, would, at any rate, have placed a bar against further abuse, and given a precise limitation to the zemindar's demand. The local or pergunnah rates, left undefined, were however preferred in Bengal.

(It can hardly be said that they were *preferred* in Bengal: both Sir John Shore and Lord Cornwallis distinctly advocated specification in the pottahs of the *amounts* payable by the ryots; the omission to exact this security was only another of the numerous serious mistakes of benevolence in 1793 which must have made angels weep.)

6. It is clear that among the rights made over by Government to the zemindars in 1793, that of imposing *abwabs* was not transferred; nor was the right transferable, because *abwabs* imposed by the subahdar were imposed for some alleged public exigency, and no such exigency can be pleaded by a zemindar of the present day for his *abwabs* (see paragraph 11). Indeed, Sir John Shore distinctly denied (paragraph 30 of his minute dated 8th December 1789) the title of even the Government to impose a war tax upon the zemindars as an *abwab*, after the declaration of the permanent settlement.

7. The progressive increase of the income of zemindaries may be discerned in the following extracts:—

I. MR. G. DOWDESWELL, *16th October 1811.*

Eighteen years have now elapsed since the permanent settlement. It is computed that the population of a country doubles itself in twenty years. If, then, the cultivation of the country had not kept pace with the increase of its population, its produce would, at the present day, be totally insufficient for the support of its inhabitants. Exclusively of this consideration, almost every person's observation leads him to remark the extension of cultivation in one part of the country or another; and we

have every reason to suppose that estates which before yielded to the proprietors a surplus produce of ten or twelve per cent. on the jumma, now yield them a surplus produce of thirty, forty, or fifty per cent.

APP. VII.
—
ZEMINDARS'
INCOME GREAT-
LY INCREASED.

Para. 7, contd.

II. MR. H. COLEBROOKE, 1813.

The extent and value of the general improvement may be judged from the particular instances which come under the notice of the revenue and judicial authorities, when occasions arise for ascertaining the proprietors' income by regular inquiry, or when it is incidentally made known, or is deducible from other circumstances, such as the price which lands fetch at public or at private sale. From such sources of information

Revenue
Selections, Vol.
I, pages 105-96
and 207.

	Rs.	Rs.
* Sudder jumma ...	10	
Proprietor's present income ...	5	
	—	15
Sudder jumma ...	10	
Proprietor's former income ...	1	
	—	11
Difference ...	4	
	==	

there are grounds for reckoning the net income of zemindars, upon an average, at an amount equal to half the assessment payable to Government. This indicates* an improvement in the proportion of one-third of the former produce of the land. * * The present landholders are opulent and prosperous.

III. MR. J. MILL, 2nd August 1831.

By the practice of preceding governments, one-tenth of what was collected by the zemindar (I speak of Bengal) was allowed to him as his remuneration; he had other sources of profit; but it was upon the principle of this division that the permanent settlement was made: the understanding was that nine-tenths of the rent, or of the net produce of the land collected from the ryots, was paid to Government, and one-tenth was reserved for the zemindars. The progress of circumstances has very much altered those proportions.

Third Report,
Select Commit-
tee, 1831-32,
Question 3120.

IV. MR. H. ST. GEO. TUCKER, 9th April 1832.

The zemindar, most assuredly, has obtained under the permanent settlement much larger rents now than he could ever have done, perhaps, under the former system: he has also had very great advantages from bringing into cultivation waste lands, which have formed a new source of rent to him.

Bengal, 1831-32,
Vol. XI, Question
1832.

V. MR. A. D. CAMPBELL, 1832.

a.—The zemindars may be divided into three distinct classes: first, the village zemindars, or cultivators in the provinces of Bengal and Behar raised to this rank on the introduction of the permanent settlement there; secondly, the purchasers of this right by public auction; and thirdly, the ancient zemindars whom we found, as such, on our acquisition of the country. A vast benefit has been conferred on the whole of these

1832, App.
No. 6, p. 22.

APP. VII. called putneedars, have sub-let to others called durputneedars, who hold parcels of the original talook with an advance of rent, but otherwise on the same conditions; these, again, similarly sub-let the lands held by them, or rather the rent thereof; and so, through several gradations, to the renter of a single village or less. The same system has extended to other zemindaries, and has been made the subject of a distinct Regulation, *viz.*, VIII of 1819.

BYOTS KARYAKHND
BY SUB-
INFEUDATION.

Para. 9, contd.

Question 2619.—Do those persons who successively derive a profit-rent reside on the land, or do they reside in the towns, or in Calcutta? The lowest class, who actually collect from the cultivators, generally, I believe, reside upon the land: the superior tenures are held by various classes; some I have known living in Calcutta and in other towns.

III. MR. A. D. CAMPBELL, 1832.

Ibid., App.
No. 6, pages
16-17.

(After a description of the sub-tenures similar to that in the two preceding extracts.)

a.—The tenures of each of the three new orders of sub-zemindars are perpetually entailed on their heirs and assigns so long as those fixed augmented sums are paid to their respective superiors.

b.—If the zemindary system itself has failed to define the public revenue payable by the cultivator, or to fix it on the fields he occupies, still less can this most desirable end be accomplished when the cultivator is driven to a fifth remove from the Government, his original and natural protector: the intermediate ranks being filled by the zemindar and his three successive hereditary sub-contractors, each constrained to realize more than he pays, and each paying an augmented sum fixed in perpetuity. The cultivator, indeed, from whom the whole has to be wrung, whose payment was the only one limited by the despotic sovereigns who preceded us in the government of India, is also now the only individual whose payment, in these permanently-settled districts, the British Government have left undefined.

c.—Independently of the bad effect on the interests of the cultivators of these sub-tenures, their immediate tendency is not to transfer, as the zemindar was previously competent to do, to another, any portion of his zemindary, along with the duties annexed to it, but to separate the property from the duties of the zemindary tenure, and thus to crumble down, by successive alienations, the property in the land revenue which the Government granted to the original zemindar; and to enable him to divest himself entirely of the hereditary duties, which the inheritance of that property, and the perpetual confirmation of it, at the permanent settlement, evidently impose on the holder of each zemindary.

IV. SIR GEORGE CAMPBELL.

Bengal Adminis-
tration Report,
1872-73.

The practice of granting such under-tenures has steadily continued since 1819, until at the present day, with the putnee and subordinate tenures in Bengal Proper, and the farming system of Behar, but a small proportion of the whole permanently-settled area remains in the direct possession of the zemindars.

V. MR. H. COLEBROOKE, HUSBANDRY OF BENGAL, 1806.

APP. VII.

The under-tenants, depressed by an excessive rent in kind, and by usurious returns for the cattle, seed, and subsistence advanced to them, can never extricate themselves from debt. In so abject a state, they cannot labour with spirit, while they earn a scanty subsistence without hope of bettering their situation. Wherever the system of an intermediary tenantry subsists, the peasant is indigent, the husbandry ill-managed.

ABWABS.

Para. 11.

Page 64.

10. It was observed by Sir John Shore (minute June 1789):—

“If we admit the property of the soil to be vested in the zemindars, we must exclude any acknowledgment of such right in favour of the ryots, except when they may acquire it from the proprietor.”

But he also stated the converse, *viz.*, that the rights of the resident occupancy ryot limited those of the zemindar; and similarly, the exactions or oppressions of the zemindars, which the Government of 1793 admitted their obligation to provide against, imply a proper limit to the demands upon the ryot, that is, the possession by him of some kind of right.

Harington's
Analysis of
Regulations,
page 267.

11. ABWABS.

Abwabs and exactions are not a pleasant subject; what little of amusement could be found in the former was got by Sir Broughton Rouse, when he facetiously described *abwabs* as “little contributions spontaneously given to supply any extraordinary expense.”

Pages 176-7 of
his Dissertation.

I. MR. J. GRANT.

a.—When the number and amount of *abwabs* were increased, and were levied in the gross, according to the variable and gradually undefined extent of zemindary jurisdictions, leaving it to the interested landholders themselves to apportion the additional assessment throughout their subordinate lesser districts, instead of the State distributing the *abwabs* rateably according to the standard assessment, then it was that the constitution of India might be said first to have been violated, the rights of Government as well as of the peasantry infringed, and a system of fraud, speculation, or oppression, alike injurious to the commonalty at large, substituted in the room of the regular equitable mode of Mogul administration.

Fifth Report,
pages 266 and
275.

II. SIR J. SHORE, June 1789.

My objections to the principal of the subahdarry imposts have a reference to the circumstances under which they were established. If the rates in the tukseem of Turee Mull with respect to the ryots had not been previously augmented by impositions separate and distinct from those of the soubahs, perhaps the best possible mode of obtaining an increase would have been by demanding it in certain proportions to that

Ibid., page 175.

APP. VII. standard, with a due regard to the degree of improvement in the country. But the fact was otherwise; and these demands upon the zemindars confirmed and perpetuated their impositions upon the ryots, anteedently levied for their own subsistence and emolument, whilst it opened a door for future unbounded exaetions (*paragraph 64*).

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ABWABS.
Para. 11, contd.

III. TAGORE LAW LECTURES, 1874-75.

ges 329-30.

Provision is made, both in the Decennial Settlement and under the regulations for the Permanent Settlement, for a penalty of double the amount in the case of exaetions by the zemindars from these dependent talookdars. It is further provided that no new *abwab* or *mathoot* shall be imposed upon the ryots under any pretence whatever, and a penalty of three times the amount exacted is to be paid in case of such imposition. It is further provided that the cess called *najay* is not to be exacted: this, it will be remembered, was an exaction from the remaining ryots to make up the rents of those who had absconded or died. We have seen that exaetions of all kinds are still levied.

IV. See also para. 5.

12. But while the zemindars were increasing their income by *abwabs*, and by sub-infeudations which enabled them to discount the unearned increment from enhancement of rents, the laws of inheritance were gradually working out a disintegration of zemindaries, which are only adding to the ryot's burdens by subjecting him to many masters, and to a class of small zemindars whose necessitous circumstances make them rapacious. The sub-division of permanent sub-tenures into fractional parts is also increasing the confusion.

I. SIR F. J. HALLIDAY, 2nd September 1856.

a.—There is, however, a question whether there are not some post settlement under-tenures which, far from encouraging agricultural improvement, are by their nature so destructive and ruinous to the public weal, as to render it highly desirable to discourage them by all means in our power, and even to get rid of them as far as possible, instead of doing anything to encourage and perpetuate them. I mean those tenures which are extremely common in Bengal and Behar, and more particularly in Bengal, which convey a right of collecting a half, or a fourth, or any other share of the rents of a mehal, or a division of a mehal, or a village. There are numerous cases in which one khodkasht ryot has to pay his little rent in shares to three or four or more talookdars, or other under-tenants of the zemindar; every sharer trying to get the most he can, and to over-reach his co-sharer, and the ryot being ground to powder between them all. This is notoriously one of the curses of the country, carrying with it the most bitter and ruinous consequences.

b.—There are a great many districts under the Government of Bengal, including all the districts of the Behar Province, in which the

APP. VII.

EXACTIONS AND
OPPRESSION.

Para. 13.

sub-division of shares is carried to a great extent. I walked into a small village a few days ago, in the Patna district, which I was told on the spot was divided among, or held jointly by, seventy sharers; and at Chupra I was visited by certain zemindars of old family, whose zemindary, never large, is now held in seventy-five shares, of which each separate share is owned by three or four different persons. These were spoken of as quite ordinary cases, and it seems obvious that the number of the sharers will go on increasing under the Hindu law up to the limit of starvation, especially if encouraged and fostered by unlimited separate accounts at the Collectorate. The question cannot but occur to me—is it wise and politic to encourage this?

II. COMMISSIONER, PATNA DIVISION, *24th August 1858.*

One hundred and fifty sharers in a single undivided village is by no means an unusual number in this division. Is each ryot to be liable to one hundred and fifty suits, and how is the Court to ascertain what the precise share of each shareholder is?

III. PROTESTANT MISSIONARIES (REVEREND A. DUFF AND OTHERS, 1852).

Many estates are the joint property of a number of zemindars, of whom one may be entitled to one-half, another to a quarter, a third to the twelfth or sixteenth part of the proceeds. In such cases it is the usual practice for each shareholder to maintain a separate agency, and to keep separate accounts, so that every ryot has transactions with a number of landlords.

IV. MR. B. J. COLVIN, *4th April 1857.*

The next proposed amendment has for its object to enable a sharer in a joint estate to open a separate account for the revenue due upon his share. I doubt the policy of this rule; it will foster and encourage disputes, from the knowledge that separation is an easy thing. At present the necessity of preserving an estate makes people harmonize; and I venture to predict that estates will soon by its operation be broken up into infinitesimal portions. I have witnessed such a result in attached estates in the Pooree District, where the village co-parceners were recorded separately in the zemindar's sheristah even to shares of a pie or gundah each. Some check should be put to such indiscriminate sub-divisions.

13. EXACTIONS AND OPPRESSION.

I. On this subject Sir John Shore expressed himself with a modest hesitancy, arising out of the ignorance of Government, which Lord Cornwallis set aside with his airy confidence in the all-saving efficacy of his benevolent Zemindary Settlement.

SIR JOHN SHORE (*September 1789*).

a.—We are not fully informed of all the abuses which are practised by zemindars, farmers, and their officers, in the detail of the collection, or

Fifth Report,
page 458.

APP. VII. fully prepared to correct in every instance such as we know or presume to exist, by specific Regulations: much may however be done, and many rules may be established, for remedying existing evils (*paragraph 67*).
 — —
 OPPRESSION OF RYOTS.

Para. 13, contd.
Ibid., page 185.

LORD CORNWALLIS (*3rd February 1790*).

b.—We have found that the numerous prohibitory orders against the levying of new taxes, accompanied with threats of fine and punishment for the disobedience of them, have proved ineffectual; and, indeed, how could it be expected, that whilst the Government were increasing their demands upon the zemindars, that they in their turn would not oppress the ryots; or that a farmer, whose interest extended little further than to the crops upon the ground, would not endeavour to exact, by every means in his power, as large a sum as possible, over and above the amount of his engagements with the public?

II. MR. H. COLEBROOKE—HUSBANDRY OF BENGAL.

Third Report,
 Select Committee,
 1831-32.

The measurement is made by a beegah which contains twenty biswas. It is a square measure on a side of twenty eathas: but this varies from three and a half to nine cubits. A pole of the established length ought to be deposited in the public offices of the district, sealed at both extremities with the official seal of the province: and the measurement should be made with a pole of that length, or with a rope equal to twenty such poles. In either mode the tenant has been commonly defrauded by keeping the middle of the pole elevated, or by withholding a part of the rope. So great has been the customary fraud, that ryots have been known to consent to the doubling of their rates upon a stipulation for a fair measurement.

III. MR. J. MILL (*9th August 1831*).

There can be no doubt that the circumstances in which Bengal has been placed, independently of the zemindary system, have for a number of years been unusually favourable to the population generally, because they have been exempted from wars; they have been exempted from the ravages of an enemy of any description; they have enjoyed perfect tranquillity, and, to a certain degree, the protection of law. One evil which ought to be mentioned, a great proportion of which I think can hardly be ascribed to any other cause than the operation of the zemindary system, was the dacoity, or gang robbery, which prevailed to a frightful degree in Bengal a number of years ago, notwithstanding the general timidity and passiveness of the people. The evidence affords rather the means of inference than direct proof of the point; but I cannot help believing that the degree in which the ryots were exasperated by being deprived of their rights, when the operation of the zemindary system began to be felt by them, was one great cause of these enormities.

Q. 3366.—Did not they exist prior to that period? Not in any so alarming a degree.

Q. 3367.—Of what class of persons did the dacoits consist? Chiefly of the agricultural population in all parts of Bengal—the ryots.

Q. 3368.—What is the state of 'dacoity at present? Exceedingly reduced; it is not altogether extinguished, but it now does not exist in a degree to be any very remarkable evil.

Q. 3369.—Do you think the people are taking more to agricultural habits? Great exertions, no doubt, were made to put down the practice; there were severe examples made, and everything was done to render the police effective, and those exertions no doubt had their effect; but I believe that the disposition of the people to acquiesce in what they found was remediless has also had its effect.

Q. 3370.—Might it not be possible that there has been less oppression on the part of the landlords? We have not any evidence to that effect; and I conceive that the ground of the exasperation was, in the first instance, when the men, who considered that they had a right to hereditary occupancy, were either turned out of their possession, or had the rates increased upon them to such a degree that they could not retain them; then it was that they became desperate, and had recourse to those extremities.

IV. MR. N. J. HALHED.

a.—To enable the proprietors to fulfil their engagements with the Government, it was likewise deemed expedient to vest them with certain extra-judicial powers of great extent over their under-farmers and tenants (for the *raeents*, under the operation of the Code, can be considered in no other light than as tenants-at-will), by which they were authorised to attach their crop and all personal property (tools and materials of manufacture, cattle, seed-corn, and implements of husbandry excepted) without reference to the courts of law, and to cause the same to be sold by the "Kazee," or other person appointed for the purpose, in liquidation of the arrears. It was supposed that no undue or improper exercise of those powers would be resorted to, in consequence, of the severity of the penalties provided; but as these penalties could be enforced only on proof being given in a judicial court, an injured *raeent*, with neither time nor money to spare, is ill able to bear the expense of both, which the institution of a suit, and the necessary attendance, involve. The chances of impunity are very much in favour of the oppressor, and those chances are enhanced by the denunciation of punishment for unfounded complaints, while the Code itself opposed an almost insuperable obstacle to the production of proof, by rendering it difficult, if not impossible, for the *raeent* to summon the zemindary amlah to substantiate his plaint. On the other hand, the severity of the penalties for resistance of attachment, and for the removal or fraudulent transfer of the property, with intent to evade it, together with the certainty of their being enforced by summary process, rendered opposition hopeless. The *raeents* were subsequently subjected to further severities, and were rendered liable to personal arrest and imprisonment before trial, and in default of bail, by summary process for arrears;—their doors to be forced by the police, and their houses entered in search of distrainable property. In the event of their being endamaged by the decision passed after the issue of summary process, they could obtain redress only by instituting a civil action, the expense and delays attendant on which (arising out of the latitude of appeals in a great measure) opposed obstacles which, to

APP. VII.

OPPRESSION OF
RYOTS.

Para. 13, contd.

Page 100.

VII. a poor man, may be viewed as insurmountable. If a sale of the proprietor's estate in satisfaction of arrears of revenue took place, the sale cancelled all previous obligations between him and the *racont*, and the zemindars took frequent advantage of this claim, by forcing a sale, solely to enable them to repurchase, under a fictitious name, and to raise the rents fixed under former stipulations at a lower rate.

PROPRIETOR'S
CARE
NOTS.
contd.

b.—The necessity for these harsh measures is said to have been indicated by defalcations of the revenue payable by the zemindars and other newly created exclusive proprietors, which they ascribed to the extreme difficulty alleged to have been experienced by them in realizing their rents from their under-farmers and tenantry. The preambles to the Regulations would induce the belief that their complaints were well-grounded: there are, however, strong reasons for supposing that much of the mischief arose from their own oppressive conduct and mismanagement. For instance, the newly-created proprietors are known to have taken every advantage of the privilege conferred upon them of letting out their estates: their farmers re-let their farms in small portions to others; and as the object of all parties was to make the best of their bargains, and as the gains of each were drawn from the cultivating classes, the means of these last became insufficient to answer the heavy demands made upon them: they fell in arrears to the middlemen, these again to the farmers, who could not fulfil their engagements with the zemindars, and a defalcation of the Government revenue was the necessary result.

c.—In many instances, also, the zemindars gave large portions of land, at a quit-rent, to their immediate relations, and raised the rates upon the other ryots to cover the deficiency—a piece of oppression they were authorised to inflict, as the latter were, in a great measure, placed out of the protection of the law, in consequence of their being unwilling to accept the leases which the zemindars were directed to grant to them (with the usual jumma and arbitrary cesses consolidated into one sum), under the well-founded conviction that in subscribing such engagements they would be resigning rights which they had hitherto deemed, and on the most substantial grounds, to be strictly allodial.

14. Having ascertained the facts, we may now consider their accordance with theory.

I. SIR J. SHORE, *June 1789*.

Fifth Report,
page 186.

a.—The situation of a zemindar combines two relations: one which originates in the property of the land, a portion of the rents of which he pays to the State; and the other, in his capacity of an officer of Government, for *protecting the peace of the country*, and for *securing the subjects of the State from oppression*.

(Para. 166.)

Page 200.

b.—To enlarge upon this subject (the management of zemindaries by women) is unnecessary. Nothing can be more absurd than to assign a trust of the utmost importance to Government and to its subjects, whose property and security depend upon the faithful discharge of it, to an agent precluded from all knowledge of its obligations, as

well as from all interference in the execution of them: in short, to require the performance of acts of the first consequence to the State and its subjects, from a person incapable of any exertion.

APP. VII.

RYOTS' RIGHTS
DESTROYED.

II.—FIRMAN OF AURUNGZEBE TO THE COLLECTORS OF REVENUE.

Para. 14, contd.

a. First.—They must show the ryots every kind of favour and indulgence, enquire into their circumstances, and endeavour, by wholesome regulations and wise administration, to engage them with hearty good-will to labour towards the increase of agriculture, so that no lands may be neglected that are capable of cultivation.

Patton's Asiatic
Monarchies,
page 310.
Ibid., page 350.

b.—You will not give the *choudries* and *aumils* admission to you in private; but make it a rule for them to attend publicly at the cutcherry, and when the lowest ryots shall come to represent their case to you, you will make them your friend, by showing them notice, and treating them with kindness, that they may not have occasion for the patronage of another to express their wants.

III.—PROCEEDINGS OF GOVERNMENT, 16th August 1869.

It ought to be remembered that the welfare and good of the whole was never intended to be sacrificed to the enriching of a few who can show no pretence to these peculiar advantages.

Colebrooke's
Supplement to
the Regulations.

IV.—MR. FORTESCUE, 1831-32.

The engagements between the Government and the landholders based on those of the Native Governments, all contemplate and direct protection and justice towards the ryots. All jaghire, istimrar, enam, maafee and other grants from the native rulers go specifically to this point; and the fact of petition against and redress of grievance in former times, is no less notorious, than matter of historical record.* * The grants of the ancient Government recognize qualified rights in the ryots, and the fact of their having maintained them is established. Further, neither the permanent settlement, nor any subsequent Regulation, has cancelled those rights.

Parl. paper,
Sess. 1831-32,
Vol. XI, page
233.

V. Yet where are those rights? Mr. Stuart's minute, dated 18th December 1820, answered the question.

a.—From the disposition to view the subject according to European notions and principles, the chief engagers with the Government are often assumed to be like European landed proprietors, who have full power over their estates to lease them at their will, while the immediate occupants of the soil are their tenants. The payments of those occupants are held to be the landlords' rents, and the demand of Government to be a tax on rent. Viewing the subject in this light, it is the chief engagers alone who suffer from the tax, or can benefit from the remuneration of increase; and the measure carries the popular and captivating appearance of a voluntary limitation by Government of an invidious power on behalf of a favoured and respected class.

b.—But I need not remark how different is the real state of the case: that the payments of the ryots are the ancient and inherent dues of the State; and that any classes intervening between them and the ruler can claim only a defined and limited proportion of the produce of the soil, or some other limited remuneration.

Revenue Selec-
tions, Vol. III,
page 221.

APP. VII.

RYOTS' RIGHTS
DESTROYED.

Para. 14, contd.

c.—Hence has been started the important question—might not any sacrifice of the fiscal interests of the State, which it may be in the power of the Government to make, be more beneficially made for the Government and the people in favour of the great body of the agricultural community, in preference to the higher classes connected with the land?

d.—But a settlement upon the principles of the permanent settlement in the Lower Provinces, is, as I have stated already, an assignment for ever of the dues of Government in favour of the chief revenue engagers; and such a measure obviously opposes a perpetual bar against the Government extending to the inferior classes of the agricultural community any relief from the burthen of their present payments.

e.—If, then, there be any force in the consideration, the Government may, by the adoption of the measure, forego for ever very noble means of promoting the welfare of the most numerous and most meritorious body of its subjects.

f.—But I have hinted at another light in which the matter may be regarded. The payments of the immediate occupants of the soil are a tax upon its produce; and, as I have stated above, names of high authority in the science of political economy have recently maintained that such an impost falls, not upon the cultivator, but the consumer.

g.—In this view, the necessary operation of a perpetual settlement would be to perpetuate a heavy tax upon the whole produce of the soil, and to leave the Government powerless to afford any relief to the community under any possible change of circumstances.

VI.—MILL'S HISTORY OF BRITISH INDIA, VOLUME V, BOOK VI, CHAPTER 6.

a.—We have thus seen the effects of the new system upon the zemindars. Let us next endeavour to trace its effects upon a much more important class of men, the ryots. Unfortunately for this more interesting part of the enquiry, we have much more scanty materials. In the documents which have been exhibited, the situation of the ryots is in a great measure overlooked. And it is from incidental circumstances and collateral confessions that we are entitled to form a judgment of their condition. This result itself is, perhaps, a ground for a pretty decisive inference; for if the situation of the ryots had been prosperous, we should have had it celebrated in the loftiest terms as a decisive proof, which surely it would have been, of the wisdom and virtues of our Indian Government.

b.—When it was urged upon Lord Cornwallis by Mr. Shore and others, that the ryots were left in a great measure at the mercy of the zemindars, who had always been oppressors, he replied that the permanency of the landed property would cure all those defects; because “where the landlord has a permanent property in the soil, it will be worth his while to encourage his tenants, who hold his farm on lease, to improve that property.” It has already been shown how inapplicable this reasoning was to the case which it regarded. It now appears that the permanency from which Lord Cornwallis so fondly expected beneficial results, had no existence; that the plan which he had established for giving permanency to the property of the zemindars, had rendered it less permanent than under any former system—had, in fact, destroyed it. The ryots, left without

any efficient protection, were entrusted to the operation of certain motives, which were expected to arise out of the idea of permanent property; and, practically, that permanence had no existence. The ryots were by consequence left altogether without protection.

"Fifty means," says a very intelligent and experienced servant of the Company, "might be mentioned in which the ryots are liable to oppression by the zemindars, even when pottahs have been given. The zemindars will make collusive engagements, and get ryots to do so. *Bajchkerch* and village expenditure will go on at a terrible rate, as it does in the Circars, and where I have no doubt but there are farmers, and under-farmers and securities, and all the confusion that arises from them; that pottahs are not given, and that village charges are assessed on the ryot as formerly."¹

c.—It is wonderful that neither Lord Cornwallis, nor his advisers, nor his masters, either in the East India House or the Treasury, saw that between one part of his Regulations, and the effects which he expected from another, there was an irreconcilable contradiction. He required that fixed unalterable pottahs should be given to the ryots; that is, that they should pay a rent which could never be increased, and occupy a possession from which, paying that rent, they could never be displaced. Is it not evident that, in these circumstances, the zemindars had no interest whatsoever in the improvement of the soil? It is evident, as Mr. Thackeray has well remarked, that in a situation of this description, it may be "the zemindar's interest not to assist, but ruin the ryot; that he may eject him from his right of occupancy, and put in some one else, on a raised rent; which will often be his interest, as the country thrives, and labour gets cheap."

d.—It is by the judges remarked, that numerous suits are instituted by the ryots for alleged extortions. The zemindar lets his district in farm to one great middleman, and he to under-farmers, to whose exactions upon the ryots it appears that there is really no restriction. In one of the reports in answer to the queries of 1802, we are informed that "the interchange of engagements between the parties, with few exceptions, extends no further than the zemindar's farmer, who is here called the *sudder* (or head) farmer, and to those among whom he sub-divides his farm in portions. An engagement between the latter and the cultivator, or heads of a village, is scarcely known, except the general one, to receive and pay agreeably to past and preceding years; and for ascertaining this, the accounts of the farm are no guide. The zemindar himself, seeing that no confidence is to be placed in the accounts rendered him of the rent-roll of the farm, from the practice which has so long prevailed of fabrication and false accounts, never attempts to call for them at the end of the lease; and, instead of applying a correction to the evil, increases it by farming out the lands literally by auction; and the same mode is adopted in almost every sub-division of the farm."² This is the security which is afforded to the cultivators by the boasted permanency of the property of the zemindars. That any prosperity can accrue to this class

APP. VII.

RYOTS' RIGHTS
DESTROYED.

Para. 14, contd.

¹ Mr. Thackeray's Memoir, April 1806, fifth Report, page 914.

² Answer of Mr. Thompson, Judge and Magistrate of Burdwan, fifth Report page 544.

APP. VII. of people, or encouragement to agriculture from such an order of things, is not likely to be alleged.

Para. 11, contd.

e.—The relation established by Lord Cornwallis between the ryot and the zemindar was remarkable. The zemindar had it in his power to pillage the ryot; but the ryot had it in his power to distress the zemindar. He might force him to have recourse to law for procuring payment of his rent, and the delay and expense of the courts were sufficient to accomplish his ruin. It is the habit of the people of India to pay nothing until they are compelled. A knowledge that they might always ward off the day of payment to a considerable distance, by waiting for a prosecution, was a sufficient motive to a great proportion of the ryots to pursue that unhappy course which, in the long run, was not less ruinous to themselves than to the zemindars.

f.—The following picture of these two great classes of the population is presented by a high authority (Sir H. Strachey in 1802). "By us, all is silently changed. The ryot, and the zemindar, and the gomastah, are, by the levelling power of the Regulations, very much reduced to an equality. The protecting, but often oppressive and tyrannical, power of the zemindar, and the servitude of the ryot, are at an end. All the lower classes—the poorest, I fear, often in vain—now look to the Regulations only for preserving them against extortion and rapacity. The operation of our system has gradually loosened that intimate connexion between the ryots and the zemindars which subsisted heretofore. The ryots were once the vassals of their zemindars. Their dependence on the zemindar and their attachment to him have ceased. They are now often at open variance with him; and, though they cannot contend with him on equal terms, they not unfrequently engage in lawsuits with him, and set him at defiance. The zemindar formerly, like his ancestors, resided on his estate. He was regarded as the chief and the father of his tenants, from whom all expected protection, but against whose oppressions there was no redress. At present the estates are often possessed by Calcutta purchasers, who never see them, and whose agents have little intercourse with the tenants, except to collect the rents."

Report by Sir H. Strachey in 1802; fifth Report, page 564.

"The ryots," says the same excellent Magistrate, "are not, in my opinion, well protected by the revenue laws; nor can they often obtain effectual redress by prosecuting, particularly for exaction and dispossession;" and these are the very injuries to which they are most exposed. The reason Sir Henry immediately subjoins: "The delay and expense attending a lawsuit are intolerable, in cases where the suitor complains, which almost invariably happens, that he has been deprived of all his property. The cancelling of leases, after the sale of an estate for arrears, must frequently operate with extreme harshness and cruelty to the under-tenants."¹ *Sir H. Strachey's answer to interrogatories, fifth Report ut supra, page 528.*

15. The Indian Government, in their observations addressed to the Court of Directors, "appeared," say the Select Committee of the House of Commons, "unwilling to admit that the evils and grievances complained of arose from any defects

¹ Report by Sir H. Strachey in 1802; fifth Report, page 564.

in the Regulations. The very grounds of the complaints, the Government observed, namely, those whereby the tenantry were enabled to withhold payment of their rents, evinced that the great body of the people employed in the cultivation of the land, experienced ample protection from the laws, and were no longer subject to arbitrary exactions;"—that the great body of the people enjoyed protection, because they could force the zemindars to go to law for their rent, is an inference which it would be very unwise to trust; which appears to be, as there is no wonder that it should be found to be, contrary to the fact. But suppose the fact had been otherwise, and that the ryots received protection, was it no evil, upon the principle of the Regulations, that the zemindars were ruined? Yet so it is, that the organ of Government in India found this ruin, when it happened, a good thing; affording, they said, the satisfactory reflection, that the great estates were divided into small ones; and that, by change of proprietors, the land was transferred to better managers.

APP. VII.

Para. 16.

16. Summing up the information in this appendix, it appears that—

I. (*Para. 1*). The only two classes of proprietors holding independently of the State, were the fixed occupants of fields, by whom, or at whose risk and charge, land is tilled; and the members of village communities. The title of these included a right of occupying waste lands in the village, for their sons and descendants, at the customary rates of rent paid by *khodkasht* ryots. The rest derive their title from the State, which could not confer any right to the prejudice of the other two classes.

II. (*Para. 2*). Ryots' rights were reserved; and in reserving, Lord Cornwallis stated that he understood the word permanency to extend only to the *jumma*, and not to bar future regulation of ryots' rights, which his Lordship defined to be the exemption from increase of the ryots' rent by *abwabs*. Such increase, Lord Cornwallis held, could be justified only by supposing "the ryots to be the absolute slaves of the zemindars; every beegah of land possessed by them must have been cultivated under an expressed or implied agreement that a certain sum should be paid for each beegah, and no more. Every *abwab*, or tax, imposed by the zemindar over and above that sum, is not only a breach of that agreement, but a direct violation of the estab-

APP. VII. lished laws of the country. The cultivator, therefore, has in such cases an undoubted right to apply to Government for the protection of his property; and Government is at all times bound to afford him redress." In this passage Lord Cornwallis made no distinction between khodkasht ryots and other ryots. Including all in the general term cultivators, he stated that the cultivator had an undoubted title to fixity of rent, not subject to increase at any time thereafter, and that it was the Government's bounden duty, not then only, but at all times, to protect him in that right. In applying the principles of the Permanent Settlement in the Madras Presidency, the ryot's right was understood in this sense (paragraph 2, section III), and was secured by the Madras Government in this sense. The extracts in paragraph 5, sections I to III, show that this permanent limitation of the rent of "ryots," without distinction of classes of ryots, was discussed, and was affirmed in the course of the discussion, by both Sir John Shore and Lord Cornwallis. The Permanent Settlement was understood in this sense in Mill's History of British India, Vol. V, Book VI, Chapter 6 (paragraph 13, section V of this Appendix).

III. (*Paras. 3 to 6*). The zemindar's right to increase the ryot's rent was distinctly denied by Lord Cornwallis; and in enumerating the sources from which the income of zemindars was to increase, he did not include an enhancement of the rents of ryots from rise of prices, or from other cause than the cultivation of some better kind of produce. The amount, including old *abwabs*, to be paid by each ryot, was to be fixed, and fresh *abwabs* were prohibited: the fixing of the amount thus precluded its increase from a rise of prices or from *abwabs*.

IV. Yet so great was the extent of waste land which Government bestowed in free gift on zemindars, that, as population increased, the income of the zemindars, though fixed at one-tenth of the Government revenue, came to equal or exceed that revenue by 1848.

V. Shortly after the introduction of the Permanent Settlement, zemindars freed themselves from their landlords' duties towards their tenants by sub-infeudations, which greatly harassed the ryots, whose condition is impoverished by enhancement of rents wherever sub-infeudation prevails.

VI. *Abwabs*, or illegal cesses, exactions, and oppression of ryots, became rife after zemindars had been armed with special powers for recovering rent from ryots.

VII. The benevolent intention of the Government was to confirm and secure the ryots' rights:—in the actual result they were destroyed. Under the old Native rule, the only assessment which was fixed was the ryot's; but under the British Government, in the permanently settled districts in Bengal, he is now the only individual whose payment has been left undefined.

APP. VII.

Para. 16, conclud.

APPENDIX VIII.

VILLAGE PROPRIETORS AND RYOTS.

APP. VIII. 1.—CULTIVATOR OR RYOT.

I.—ROUSE.

Para. 1.
Page 30.

If I have been able to ascertain rightly the title of the Indian landholders in ancient times, they were called in Bengal *Buyan* or *Bhowmy*; in the northern parts of India, *Kirsan*.

The term *Kirsan* denotes ryots or cultivators.

II.—SIR T. MUNRO.

Fifth Report,
page 331.

By the *occupier* I here mean not so much the person who performs the work, as him who procures the labour and directs the management; and I consider the whole profit as *received* by the occupier when the occupier is benefited by the whole value of what is produced; which is the case with the tenant, who pays a fixed rent for the use of land, no less than with the proprietor who holds it as his own. The one has the same interest in the produce, and in the advantage of every improvement, as the other. Likewise the proprietor, though he grant out his estate to farm, may be considered as the occupier, inasmuch as he regulates the occupation by the choice, superintendence, and encouragement of his tenants; by the disposition of his lands, by erecting buildings, providing accommodations, by prescribing conditions, or supplying implements and materials of improvement, and is entitled, by the rule of public expediency above mentioned, to receive in the advance of his rent a share of the benefit which arises from the increased produce of his estate. The violation of this fundamental maxim of agrarian policy constitutes the chief objection to the holding of lands by the State, by the King, by corporate bodies, by private persons, in right of their offices or benefices. The inconvenience to the public arises, not so much from the unalienable quality of lands, thus holden to perpetuity, as from hence—that proprietors of this description seldom contribute much, either of attention or expense, to the cultivation of their estates, yet claim, by rent, a share in the profit of every improvement that is made upon them. This complaint can only be obviated by long leases at a fixed rent, which convey a large portion of the interest to those who actually conduct the cultivation. The same objection is applicable to the holding of land by foreign proprietors, and in some degree to estates of too great extent being placed in the same hands.

III.—MR. HOLT MACKENZIE, 18th April 1832.

31-32,

It seems necessary, as the foundation of all discussions on the subject, to define the different tenures, as far as they are known, by which land

is held, commencing with the lowest class of occupants (meaning by that term those by whom, or at whose risk and charge, the land is cultivated), and proceeding upwards to the persons who stand upon the Government records as responsible for the Government demand (*Q. 2568*).

APP. VIII.

CULTIVATOR
DEFINED.

Para. 1, contd.

Page 32.

IV.—LAW AND CONSTITUTION OF INDIA.

(a). "The land of the *Suwand* of Erauk is the property of its inhabitants (*ahl*). They may alienate it by sale, and dispose of it as they please; for when the Imaum conquers a country by force of arms, if he permit the inhabitants (*ahl*) to remain on it, imposing the *Khirauij* on their lands and the *Fizeeah* on their heads, the land is the property of the inhabitants; and since it is their property, it is lawful for them to sell it, or to dispose of it as they choose." *Surauj-ol-Viharij*.

(b). The word in the above quotation translated "property" is, in the original, *milk*, which in law signifies indefeasible right of property; and the word rendered "inhabitants" is in the original *ahl*, the import of which is simply that of dwelling, residing on the lands; as they say, *ahl-ool-busrah*, the inhabitants of Busrah. Page 33.

(c). From this we see that if the inhabitants of India were suffered to remain on their lands on paying the above impost, the right of property in the sovereign is gone at once; and if it was partitioned among the conquerors, the alienation is equally complete. The question at issue, therefore, is shortened by one claim at least of the three, *viz.*, the sovereign, the *zemindar*, the *cultivator*. But in order to determine the other two claims, we must see what persons are meant by the *ahl*, who are thus vested with indefeasible right of property, for it may be said that these were the former proprietors of the soil, and that by this settlement is meant merely a confirmation of former rights. But that this is not the case, it is only necessary to know that, by the Mahomedan law, when a Mahomedan army conquers a province by force of arms, every right and interest which the conquered inhabitants before possessed ceases and determines by the very act of conquest; that the sovereign has, by law, the power even of carrying the conquered inhabitants into captivity, &c. &c. By suffering the *ahl*, the inhabitants, however, to remain under the conditions required by law, *viz.*, as *zimmes*, and to pay the *khirauij* and capitation tax, the property of the soil is established in them—not continued. *Ibid.*

(d). But who are the *ahl* here spoken of? This is the only question now remaining; and I answer, it will appear that they are those who cultivate the land. They, the cultivators, pay the *khurauij* and are termed *rubb-ool-arz*, or masters of the soil. Page 34.

(e). The great Huneefeeah lawyer, Shuns-ool-Aymah-oor Sumhshee, in speaking of *khurauij*, on the question what is the utmost extent of *khurauij* which land can bear? says "Imaum Moohummud hath said regard shall be had to the cultivator, to him who cultivates. There shall be left for every one who cultivates his land as much as he requires for his own support till the next crop be reaped, and that of his family, and for seed. This much shall be left him; what remains is *khurauij* and shall go to the public treasury." Here there is no provision made for, no regard paid to, a *zemindar* who contributes nothing to the pro- Page 34.

APP. VIII. duce of the soil. We have no ten per cent. *malikana* to recusant zemindars.

Para. 1, contd.

V.—REVENUE LETTER TO BENGAL, 9th May 1821.

Parl. Paper,
Sess. 1831-33,
Vol. XI, page
103, para. 57.

The words of the Board of Revenue are these: "With respect to the observations of the Collector, that the talookdars have expended large sums of money in bringing the lands into a productive state, we are induced to think he is misinformed on that point. The ryots generally clear and cultivate the lands at their own expense. The period of exemption from rent may, in some instances, exceed that specified in the talookdar's grant, but the burthen of expense, generally speaking, falls on the ryot."

2.—MOOZARAUT UNDER MAHOMEDAN LAW.

I.—BAILLIE ON THE LAND TAX OF INDIA.

Page XVIII.

(a). The peculiar contract called Moozaraut was the most common way of cultivating lands through the agency of tenants in Mahomedan countries. The landlord's interest under it is a share of the actual produce: and the Government interest in the *mookassimah khiraj* is also a share of the actual produce. The only difference between them is that, under the *mookassimah*, the Government share is restricted to a half of the produce, which it never can exceed, while under *moozaraut* it may be anything that the land will yield above a bare subsistence to the cultivator. So long as the *mookassimah khiraj* is actually below a half of the produce, this distinction is practically of no consequence.

(b). But it may be thought that there is another difference which will always serve to distinguish the *mookassimah* proprietor from the *moozaraut* tenant. The former cannot be ejected so long as he pays the *khiraj*, while the latter may be ejected at any time after the expiration of his legal term. It will be seen, however, that in some circumstances, *moozaraut* tenants acquire a right of occupancy, so that after the lapse of time all distinction between them and proprietors under *mookassimah khiraj* may be entirely obliterated.

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(c). The hiring of land was more commonly regulated by the contract already alluded to, called *moozaraut*. The name signifies *mutual sowing*, and the contract is essentially a co-partnership between two parties,¹ one of whom supplies the land, the other the labour.** There are indications of the existence of this contract in Persia in ancient times, before the Mahomedan conquest. The Khoosroes are alluded to as speaking of the *moozareas* as their partners in the produce of the soil. It was still common in that country in the time of Aboo Huneefa and his two leading disciples (that is, the eighth century of our era), and several centuries after it was in full vigour in the countries about the Oxus, where the principal writers lived, whose works on the subject are quoted in the following pages. The cultivators, as already observed, are described as living in *mouzaiks*, or villages, which have peculiar customs of their own. In some the relation between landlord and tenant was constituted and kept up by express contracts, renewed from year to year, and varied with special conditions. In others the contracts were tacitly

¹ One of these parties could be the State.

continued from year to year, on the same terms, without any express renewal, and in some instances for so long a period, that at length the respective shares of the landlord and tenant in the produce of the soil became fixed by custom.

APP. VIII.

CULTIVATORS
UNDER MAHO-
MEDAN LAW.

Para. 2, contd.

Page XXIX.

(d). There are only three legal kinds of *moozaraut*. Corresponding to these are three different conditions of the cultivator. In the first he supplies the labour only, and his condition is little better than that of a hired labourer; in the second he supplies the cattle also, and must therefore be in possession of ploughs and cattle of his own, ready to undertake the cultivation of any land with which he may be entrusted; in the third, he supplies seed as well as the labour and cattle, and is advanced to the condition of a small farmer, having some capital of his own. It is only in this last condition, when he may be said to sow for himself, that he can ever acquire a right of occupaney; for it is only by long possession, and repeated sowings of the land, with the tacit consent of the owner, that this right could ever be acquired. In Bengal there are three different kinds of land, and three descriptions of ryots or cultivators. These are called *theeka*, *paykasht*, and *khloodkasht*. *Theeka* is a Hindustani word which signifies hire, or hireling, and *theeka* land is land cultivated by labourers hired for the occasion. *Paykasht* is derived from two Persian words, the first of which signifies "after" or "on account of," and the second is a contraction for *kashta*, sown. *Paykasht* land is land cultivated by ryots who have no permanent interest in it, but live in other villages than those to which the land belongs. *Khloodkasht* is similarly derived from the Persian word *khlood*, self, and *kashtee*, sown, and means literally *self-sown*, or sown for one's self. *Khloodkasht* land is land cultivated by ryots who have some sort of permanent interest in it, and reside in the village to which it belongs. The interest is rather vague and undefined, and it is difficult to say precisely which it is; but it seems to be no more than a right of occupaney so long as the *ryot* continues to pay a certain rate of rent which has been long established by custom, for the quantity of land in his possession.** It seems admitted that the ryot's right to possession descends, at his death, to his children; but it is very doubtful whether it can be transferred to another by the ryot in his life-time.

(e). There is thus a great similarity between the three descriptions of ryot or cultivator in Bengal, and the three different grades of *moozareea* under the Mahomedan law. The name *moozareea*, as already observed, applies to all classes alike. The *khloodkasht* ryot corresponds to the *moozareea* of the highest degree, who supplied the seed, and might be said to sow for himself; and who, in some cases, acquired special custom, or right of occupaney in his land. In like manner, the *paykasht* ryot corresponds to the *moozareea* of the next degree, who does not supply the seed, but sows what he obtains from another, and may therefore be said to sow on account of another. And the *theeka* ryot corresponds to the *moozareea* of the lowest degree, whose condition, as already observed, differed little from that of a common labourer or hireling.

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(f). In some instances, and indeed frequently in the present times, (1853) the *paykasht* and *theeka* ryots are employed by, or work under, the *khloodkasht* ryot. There was a phase of the contract of *moozareent* that meets this case also. All *moozareeas* have the power of working

Page XXXI.

P. VIII. through the agency of hired servants, unless there is an express condition in their contracts that they shall labour on the land themselves. The highest degree of *moozareea*, or the self-sown, had a further right, even without the consent of his landlord, of entering into a *sub-moozareent* with another cultivator. In this secondary contract he would be in the position of a *rub-ool-arz* (owner of the land, or landlord), and it was probably this circumstance that has led some writers to look upon the *khoodkasht* ryot as the true *rub-ool-arz*, or proprietor of the land.

CULTIVATORS
OF THE MAHO-
MEDAN LAW.

a. 2, contd.

XXXII.
sary.

(g). In Southern India there are two classes of cultivators that seem to correspond very closely with the *khoodkasht* and *paykasht* ryot of Bengal. These are the *meerassdar* and the *paracoody* or *paragoody*. *Meeras* is an Arabic word that signifies inheritance, "but is used chiefly in Southern India to designate a variety of rights differing in nature and value, but all more or less connected with proprietary possession, or usufruct of the soil, or of its produce, as (among others) the right of the permanent cultivator to the hereditary usufruct of the land." *Dar* is a Persian word, signifying holder; *meerassdar* is the holder of a *meerass* right. "The *paracoody* or *paragoody* is a temporary tenant from another village, who cultivates the land of a *meerassdar*, and is the same as *pyagurry*, *pyacust*, and *pyacoody*." *Pyacust* is evidently the same as *paykasht*, which, by the same authority¹, signifies "farmers, who by contract cultivate lands to which they themselves do not belong." And *paycury* is the relative noun, from *paykur*, which differs from *paykasht* only as the adjective, or the active participle, does from the past, or as sowing from sown.

XXIV.

(h). In Persia, and the countries about the *Orus*, the cultivators are represented as living pretty much in the same way as they are found in India, that is, congregated in *mouzahs*, or villages, to which the lands that they cultivate are in some manner attached, and which, in some instances, appear to have peculiar customs of their own. So that the system of village communities, which is usually considered an institution peculiarly Hindu, was either introduced into India by the Mahomedans, or is a phase of society common to India with the countries which adjoin it on the north-west.

3.—MEERASSDARS AND RESIDENT CULTIVATORS IN THE MADRAS PRESIDENCY.

I.—SELECT COMMITTEE, 1812.

Fifth Report,
page 106.

(a). Though the *meerassdars* appear for some years to have been regarded in the light of fixed cultivators only, with an hereditary right of occupaney so long as they paid the dues of Government, more particular enquiry seems to have established the fact that they possess a real property in the land, having the right of mortgaging, selling, and otherwise disposing of it; and that this right they have always exercised, and do still exercise. The lands held under this tenure are, of course, of greater or less extent, sometimes comprehending a whole village or more, but generally, part of a village only. A *meerass* portion of land would, under the operation of the Hindu law (by which property descends equally to all the male children of a family,

and by which the adoption of children is admitted) be reduced by the divisions and sub-divisions of it, that would constantly take place, to estates, or rather scraps of land, of so small and minute a kind, were each individual to assume the part of it which under that law he succeeded to, as to be of little or no value to the owners of them, and quite insufficient to afford them a subsistence were they to cultivate them on their own account, unless they happened to possess other land in the vicinity. For the purpose of avoiding the inconvenience, it is the general practice throughout the peninsula to preserve the original property in its *entirety* as long as possible, by letting it stand in the names of those who have the principal shares in it, to whom it is left to manage it, for the common benefit of all interested; each person receiving his proportion of whatever it yields of grain, and in like manner bearing his proportion of loss, according to the extent of his interest in the *meerassee*, thus preserving a union and co-partnery which continues through several generations; a part of the proprietors attending to and cultivating their inheritance, and the rest of them being at liberty to seek and follow other occupations. The principal sharers, who nominally appear in the village accounts as the owners, are answerable for the payment of the public demand on the whole land. When an entire village is held under the *meerassee* tenure, it is common for a new distribution of lands to take place at stated periods, by the drawing of lots; and this custom appears to obtain where the *meerassee* constitutes but part of a village. In these cases, no part of the *meerassee* is the permanent property of any particular individual; the land belonging to the whole body of *meerassdars* connected with it. Before, therefore, a *meerassdar* can mortgage, sell, or bequeath his interest in this common property to another, the consent of the other *meerassdars* is necessary to the validity of the transaction.

(b). The term *meerassee*, by which this species of property is distinguished, was introduced by the Mahomedans; and since the establishment of their authority, the word has become familiar to all ranks. Among the Bramins it generally goes by the Sanskrit term of *sivastram*, and by that of *caviatchy* among those shudras, or cultivating classes of inhabitants, who may not have adopted the general term *meerassee*.

(c). In the poorest kind of soil producing dry grain culture, the ryots appear to have little more interest in it than that of being hereditary cultivators. It is in the paddy or wet lands called *nunjah*, that the right of *meerassee* is found to obtain in a more or less perfect form. Where the demand of Government was so high as to have absorbed nearly the whole of the landlord's rent, that is, the whole produce, after deducting the expenses of cultivation, and what was necessary as subsistence to the owner, the land naturally ceased to be either a mortgageable or saleable commodity; but even in this case, if the *meerassdar* did not cultivate the land himself, but permitted another to do so, he was entitled to receive from the cultivator a *russoom*, or quit-rent, in acknowledgment of his proprietary right termed *sawmy bogum*.

(d.) In the Southern Provinces of the Peninsula, which are situated below the ghauts, the tenures which have been described were found to exist in a less impaired state than elsewhere. In these regions there was also a considerable quantity of dry grain land, the provinces of Coimbatore and Dindigal being principally composed of such; and although

APP. VIII

MEERASSDARS
AND CULTI-
VATORS, MADRA
PRESIDENCY.

Para. 3, contd

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MEERASSDARS
AND RESIDENT
CULTIVATORS,
MADRAS PRESIDENCY.

Para. 3, contd.

of the fields of that description, those only appear to be saleable that had the advantage of wells, or, from particular circumstances of local situation, were rendered particularly desirable, yet, to deprive an individual of any field he had long cultivated, while he continued to pay the rent, had always been considered an act of injustice. The same inhabitants are represented to have peopled the same villages, ploughed the same fields, from time immemorial. The oppressions of Hyder Ally, of Tippoo Saheb, and of the Nabob of the Carnatic, may have produced a temporary emigration; but those who thus deserted their lands, returned to them from time to time.

(e). It also appears that neither the Hindu nor Mussulman Government, supposing their rights in the soil as proprietors to be undisputable, ever exercised such a right; that what was a fair assessment, and what was exaction, was known to the governing authority, and to those governed.

(f). Of the *pyacarries* or *paracoodies*, there are two descriptions. The *ool paracoody* is the fixed and permanent tenant of the *meerassdar*, who resides in the village in which the land is situated. The common *paracoody* is the temporary tenant, who is invited by the *meerassdar* from a district or a neighbouring village to cultivate his *meerassee*, under an engagement for a given period, at the expiration of which, his connection with the land determines, unless renewed by the formation of a new contract. It often happens from various causes that a *meerassdar* is unable or unwilling to cultivate his fields. In this case, it has been the practice for the Government or its managers to assign the culture of such land to *paracoodies* of their own nomination; but the right of the *meerassdar* in the soil is not impeached by this act arising from his inability; he is still considered as the proprietor, and entitled to his *sawmy bogum*, or rent, from the *paracoody* in possession, and may return again to the cultivation of his *meerassee* lands whenever he may be able or willing to occupy it.

(g). In those lands where there are no *meerassdars* to claim, the ryots may be considered as *ool paracoodies*, holding of the Circar, enjoying, as they do, an hereditary right of occupancy, subject to the condition of paying the rents demanded of them.

(h). This right, it has never been the practice, either of the Hindu or of the Mussulman Government, to take from the poorest cultivator, so long as he remained in obedience to the general authority of the Circar, and duly yielded the public share. Indeed, it is not to be discovered, in the history of the Hindus, from the reign of their first princes until the final downfall of the Hindu authority, that any of the landed rights to which your Committee have thus briefly adverted were ever impeached or destroyed; on the contrary, their uninterrupted existence is proved by numberless records, and by none more distinctly than by the ordinary form of a deed of sale.

II.—COMMITTEE AT TANJORE, 22nd February 1807.

Final Report,
pages 161-2.

The Committee will here remark that very extensive property in land is held by the *meerassdars*. Many possess from three to four

thousand acres, *not always a separate and distinct property in whole villages, but in various proportions of the meerassce of different villages.* But the property of a much greater number is very small; *many of those whose property is extensive were formerly puttuckdars ("a species of zemindar or collector in Tanjore, who had the charge of a greater or less number of villages, and resembling the Nantwars on the Jaghir"), and are said to have acquired the property by means not always justifiable.*

APP. VIII
MIRBASSDARS
IN THE MADRAS
PRESIDENCY.

Para. 3, contd.

This description particularly in the passages in italics, exactly applies to the zemindars of Bengal, and to their usurpation of the rights and property of the headmen of the villages.

SESS. 1631-32,
Vol. XI.

III.—MR. A. D. CAMPBELL (*an able paper on the Land Revenue which has been furnished to your Committee by Mr. A. D. Campbell, late a Collector under the Madras Presidency*).

(a). Subject to local exceptions,¹ the cultivators in India, in general, may be considered as divided into two great classes, *viz.*, those who are vested with hereditary rights of occupancy, and those who are not.

(b). The last-mentioned, or lowest, class consists of what, in Bengal, are termed the *pucc khushd*, and at Madras, the *paracoody pyacarry*, or stranger cultivators. These persons have their original domicile in some village at a distance from that in which they cultivate or temporarily dwell, and thence are called *migratory ryots*. Their right is never hereditary, nor transferable by sale or otherwise; and unless special agreements are entered into, it expires with the cultivation of each year. But, unless otherwise expressly stipulated, the annual demand, even upon them, is limited by local usage. When employed by the higher classes of hereditary cultivators upon the fields which those higher classes occupy, they are to be viewed either as annual tenants, or as holding under special agreements. But it has been usual for the Government, or its representatives, to call in the aid of the lower class of people to occupy the inferior fields, which the hereditary classes subsequently described have left unoccupied. In this case, they stand in direct relation to the Government, or its representatives, as the temporary substitutes for the higher classes of hereditary cultivators; and the rates leviable from them by the Government are occasionally lower than those leviable from the higher classes, on account, evidently, of the inferiority of the fields occupied by this lower class. It will be obvious, however, from the description here given, that the occupation of a field by any of the higher hereditary classes totally excludes its occupation by this class, except as the tenants of the superior occupant.

(c). But as this class of migratory ryots usually obtain a bare subsistence from the land, they find it preferable to relinquish the inferior fields they hold directly from Government, even at rates unusually low, for those of a superior and more fertile nature cultivated by the higher classes, or by themselves as the tenants of these higher classes; and whenever such become vacant, they will gladly offer to hold them directly from Government, or its representatives, at rates much higher than they pay for their own inferior fields, or than can be paid, for even the finer soils, by the hereditary cultivators, entitled by their tenure to derive more than a bare subsistence from the land. This body are, therefore, ever on the watch, by the offer of higher terms, to

¹ Chiefly in the western coasts of the Peninsula of India, Canara, and Malabar, where the non-existence of village communities and other peculiarities, distinguish the people entirely from all other Hindus.

APP. VIII.

TENURES IN
BENGAL AND
MADRAS PRE-
SIDENCIES.

Para. 3, contd.

tempt the Government, or its representatives, to oust the hereditary cultivator from his fields; but so long as the latter is willing to pay his established rates, this is universally considered an act of the greatest injustice.

(d). There exists, under the Madras Presidency, and perhaps elsewhere, a peculiar class of cultivators termed *oolcoody pyacarry*, holding an intermediate place between the foregoing and those who are subsequently described. Their tenure, originally, was precisely of the temporary kind above mentioned, and they continue frequently to hold of the higher class of cultivators; but in general they hold directly from Government. Having been allowed to occupy, from father to son, for several generations, chiefly the unirrigated fields in the Southern Peninsula, neglected by the highest class, whose stock is concentrated on the more fertile, artificially irrigated lands, they have gradually, but successfully, converted their temporary into an hereditary tenure; and ceasing to hold annually, or by special contract, their occupation of particular fields now excludes both their brethren possessing that more temporary right, and their superiors holding one, which, like their own, is based on prescription. Their right, however, continues untransferable by sale or otherwise, and in other respects corresponds with that before described, liable only to the payment of the public dues, as limited by local usage.

(e). The third, most numerous and most important class of all, termed under the Supreme Government the *khloodkasht* ryots (cultivating their own) to the northward of Madras, as well as in some of the western provinces of Bengal denominated *kudeems* (or ancients), and to the southward of the Madras Presidency, as well as in the Deccan, and in some parts of Bengal, called holders of *meerassee*, are distinguished from both the foregoing by being universally considered the descendants of the aboriginal settlers of the village, or of those who restored it, if it ever fell into decay. They, therefore, invariably hold directly either of the Government, or of its representatives, never, like those above described, of any other individual; and their tenure, being quite independent of any contract whatever, originates in the mere act of settlement, confirmed by hereditary succession. On condition of paying the public revenue defined by local usage, the holders of this tenure are vested with a perpetual hereditary right to the fields occupied by them, or at their risk and charge; and so long as that is paid, neither they nor their descendants can be justly ousted from their lands.

(f). It appears that the present village zemindars of Behar and Benares originally belonged to this important class of cultivators. In some villages, the whole of this tenure centres in a single individual, but in general it is vested in many. It is then held in one of two modes, either on what is called the "joint or common tenure," or on what has obtained the name of "tenure of severalty." Under the former, the village is divided into a certain number of fixed shares, supposed to have been determined when it was originally settled: and every holder possesses one or more of these shares, or fractional parts of a share, casting lots periodically for the actual occupation of fields in proportion to the share held by each; in this case no particular field belongs to any individual, but a certain share only in the whole

village, which is itself kept entire. Under the latter system, on the other hand, each holder has fixed possession of his own particular fields, which descend to his heirs.

(g). This hereditary tenure is distinguished, in the provinces to the southward of the Madras Presidency, by a remarkable peculiarity, connected, however, rather with its value than with its intrinsic quality or character. In the provinces under the Bengal or Bombay Government, it appears not to have been generally saleable, though the Regulations of the former Presidency occasionally allude to it as transferable. In the northern provinces, under the Madras Government, the sale or transfer of land held on this tenure appears to be quite unknown; but in the districts to the southward of that Presidency, the tenure to which the Mahomedans give the name of *meerassee* (an Arabic derivation denoting landed property in general, better known to its usual holders, the Hindu Soodras, as *cauniatchi*, *dominium ex jure hereditatis*, and to the Bramins as *swastium*, one's own) has, from time immemorial, been transferable by sale, gift, or otherwise.

(h). In addition to the rights above described, the Native Governments granted to the holders of *meerassee*, in the provinces of Arcot and Chingleput, and indeed very generally throughout India, to the principal or leading men amongst this important class of hereditary cultivators, a remission of the public revenue on certain of their own or other lands in their village. But this was in lieu of a money payment for services to be performed by them as village collectors and as officers of police, and has no connection, though it has occasionally been confounded, with their tenure as cultivators.

IV.—MR. J. MILL (11th August 1831).

Q. 3510.—Under the ryotwar system, if the ryot is divested of his land, is it not in his power to return to the possession of it at any subsequent period? That claim is maintained by a class of persons under the Madras Presidency who are called *meerasadars*; even should they have abandoned their fields, as they do when an assessment is demanded which they think beyond what they can pay, and on other occasions, at any period when they return, they claim the unlimited right of re-occupancy.

Third Report,
Select Com-
mittee, 1831-32.

Q. 3511.—Is that common to the ryotwar system in all parts of the country? I should say, from my present recollection, that this claim is peculiar to the *meerasadars*.

Q. 3512.—Is it a claim allowed by our Government? It has in some degree been limited by our Government. It was found, where the lands of the *meerasadars* were abandoned in this manner, that there was no possibility of having them occupied without great disadvantage, because the intermediate occupant was wholly uncertain with regard to the period of his occupancy, if he was liable to be dismissed by the *meerasdar* whenever he returned; and accordingly Government have taken away the power of assigning by pottah these lands of the *meerasadars* to intermediate tenants for a period of years; and it has been under consideration, though I do not recollect whether or not the

APP. VIII. become law, to name a period beyond which the claim of the *meerassadars* should not be sustained.

TENURIS IN
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SIDENCIES.

Para. 3, contd.

Q. 3513.—Wherein does the situation of the *meerassadar* in Madras differ from the *khoddkasht* ryot in Bengal? According to my conception of the matter, the right of the *khoddkasht* ryot and that of the *meerassadar* are not essentially different. The difference consists, I think, in certain peculiarities. Over a great part of the Madras territory where those *meerassassee* rights are claimed, the rights of the *khoddkasht* ryots generally have become extinct. The greater portion of the inhabitants of the village do not claim the hereditary right; the *meerassadars* are the only parties that continue to claim that right, and they commonly claim something more. There are certain fees, dues, and other privileges in the villages to which, in general, they advance claims; and they appear to me in those cases to be the descendants of the principal families who had borne office in the villages, and to whom, in that capacity, those dues belonged. Those two circumstances taken together, the hereditary occupancy of the *khoddkasht* ryots, and the claim to certain dues and distinctions in the village, which also had been enjoyed hereditarily, appear to me to account for the whole of the *meerassassee* rights.

Q. 3514. Do you conceive that *meerassassee* rights, or something very like them, existed throughout India till disturbed by the various modes of settlement which have been made? The *khoddkasht* ryots I considered to have been universal in India, and the land to have been held by them, with few exceptions; I also conceive that the principal offices in the villages were hereditary in certain families, to whom belong advantages similar to those now claimed by the *meerassadars* at Madras; that is, certain dues and privileges beyond the perpetual occupancy.

V.—REVENUE LETTER TO FORT ST. GEORGE (12th April 1815).

Revenue Selec-
tions, Vol. I,
page 649.

From the peculiar constitution of Hindu society, and the natural tendency of their laws of inheritance, we conceive that landed property in India, wherever it has existed, must have been more sub-divided than in any other country. If, in consequence of the immoderate exactions of the native Governments, you have found that species of private property, in many districts, either annihilated or nearly so; and if you are actuated, as you profess to be, by a sincere desire to restore it, the parties who should benefit from this intention are surely those, or the descendants of those, who have been reduced from the situation of proprietors to that of occupants of the soil; they are the great body of *oolcoody* or resident ryots, as distinguished from the *pyacarries* or migratory cultivators; and where it could have been done without injury to the great claims of the former, it would, in our judgment, have been an exercise of sound policy to have extended similar benefits to the latter, and thereby induced them to settle and concentrate their labours and industry in one spot (*para. 146*).

VI.—MINUTE OF BOARD OF REVENUE (5th January 1818).

Ibid., page 899.

(a). In every Tamil village, the exclusive right to the hereditary possession and usufruct of the several descriptions of land situated within its

boundaries was originally vested in the Vellalees, one of the principal Soodra castes of that nation, by whom it is termed *Cawnyatche*, or free hereditary property in the land. It would now be of little utility, were it possible, to attempt to trace the different gradations by which, in the course of time, this right has been partially transferred from the members of this caste to the various other tribes in whose possession it is now to be found. It is sufficient to know that in all parts of the Tamil country it is still retained principally by the Vellalees, but is now frequently held by the Bramins also, who distinguish it by the Sanserit term *swastium*, signifying anything peculiarly one's own, and partly by other Hindu tribes, by Mussulmans, and sometimes by Native Christians, among whom, as well as among Europeans, it is now generally known by the name of *meerassée*, a word of Asiatic derivation, denoting hereditary property in general. * * *

APP. VIII.
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PRESIDENCY.
Para. 4.

(b). On the establishment of every Tamil village, as now constituted, the rights above explained were vested in all the original Vellalee settlers as a collective body—not in each individually; every one of them, therefore, possessed a separate equal share in the whole *meerassée*, and have, in each village, to the present day; the number of equal shares into which the *meerassée* was at first divided remains the same as when the village was originally settled. In some villages there are a hundred shares, in others of the same extent, fifty or ten only; but whatever may be now the number of *meerassadars*, the number of shares invariably remains the same as at first determined. From the number of *meerassadars* having decreased since the settlement of the village, some of them may now hold two, three, four, or fifty shares. From their number having increased since that period, the shares may have been split into fourths, sixteenths, thirty-seconds, or other fractional parts, and many may therefore hold a part only of a share; but the number of original equal shares in each village has continued unaltered for ages. Supposing a village to have been at first divided among thirty-two original settlers into thirty-two equal shares, and its *meerassadars* to be now a hundred in number, if any one of them is asked how many shares there are in a village, he will immediately answer thirty-two, but when asked how many of these belong to himself, or to any other particular *meerassadar*, he will answer two, three, or four shares, or perhaps the half, the fourth, or the sixteenth part of a share, as the case happens to be. * * *

(c). Where land for a certain period, which varies in different parts of the country, has for several generations been farmed by the same family, the tenant is termed an *oolcoody pyacarry*, and by prescription becomes possessed of an hereditary right to hold his farm in perpetuity, on condition of the regular payment of the *meeniam*, or customary rent, or *teerwa*. The *oolcoody pyacarry* and his descendants never can be evicted from their farm so long as this is paid, nor can the *meeniam* be raised by the *meerassadar*; but though they can mortgage they can never sell, these their hereditary privileges.

4.—MEERASSADARS IN THE DECAN.

I.—BRIGGS on the Land Tax in India.

(a). The Collector of Poornah states the general names of the men are two: "*tulkaries*, and the *meerassadars*."

APP. VIII. *oopies*, or tenants who cultivate lands not their own. A third class exists, called *wawandkury*, a temporary tenant, who, residing in one village, comes for a season to take land in another."

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TENURES IN
THE DECCAN.

—
Para. 4, contd.

(b). The *tulkary* is a *meerassadar*. *Tul* signifies a field, and *tulkary*, the owner of land; he is considered, and invariably acknowledged by the Government, to have the property of the lands he cultivates. * * The *tulkary* pays a land-rent to Government, according to the extent and quality of his lands. This land-rent is supposed to admit of no increase.

II.—COLONEL W. H. SYKES on *Land Tenures in the Deccan* (Decc. 1830).

(a). My earliest enquiries led me to believe that the lands of villages were divided into hereditary family estates, called *thals*, bearing the names of ancient Mahratta families, the descendants of which were then in possession of them, or bearing the names of extinct families, of whose ancient possessions tradition bore testimony. The results of six years' research were confirmatory of these points. The lands of extinct families were, and still are, called *gat-kul*, from the Sanscrit *guta*, gone, passed away, and *kula*, a race, family. Under all changes of Government and new proprietary, the family names by which they were originally distinguished have rarely been disturbed, and it is probable that they are handed down from very remote times.

(b). The existence of hereditary estates being established, the tenures on which they were held will be best illustrated by an account of the relation on which the proprietors of portions of them stood, and still stand, to the Government. Persons so holding land are called *mirasadars*, a term of Arabic origin, from *miras*, heritage, patrimony. They are of two kinds, those who are descendants of the original proprietors of *thals*, and those who have purchased lands from the descendants of the original proprietors, or from the village authorities, who had at their disposal the lands of extinct families. In no instance that I am aware of, have the former documentary proof of their rights. With the latter, documentary proof is not uncommon, in the shape of a paper called a *miras patta*, or letter of inheritance, which is witnessed not only by the authorities of the ville where the letter is granted, but by those of neighbouring villages, and by the *deshmook* and *despard* of the district, and the privity of Government is consequently implied.

(c). *Mirasadars* of the present day claim a right to the personal occupancy of their land so long as they pay the Government assessment on it; and in case of failure in the payment of the Government dues, and the consequent forfeiture of the right of occupancy, they claim the right to resume it whenever they can pay their arrears, and also to mortgage or sell it at pleasure. The land-tax is asserted to have been fixed, and there is no reason to doubt it, as all *miras* land still continues to pay the *sosthi-dar*, or what is deemed the permanent tax; but Government at pleasure could put extra cesses on it, and thus neutralise the advantage of a permanent tax, and render the *miras* tenures valueless.

(d). Although *miras*, or hereditary land, was assessed permanently, yet it was at a higher rate than any other land, at least if we judge from the difficulty discoverable in village papers for the last half century of letting waste land at the *miras* rate. This permanent assessment on

the *miras* land was called, as I before stated, the *sorshi-dar*; there was an extra tax also payable every three years, called *miraspatti*, or a specific tax upon the hereditary land, being a kind of smart money for the distinction which the term *mirasadar* conferred. APP. VIII.

DECCAN
TENURES.

(e). From the extinction of numerous Mahratta families who were in possession of *thals*, or hereditary estates, great part of the land in the country is without proprietors; in consequence, a very numerous class of occupiers is the *Upari*. The proper meaning of this term is a stranger, or one who cultivates land in a village in which he has not any corporate rights. In practice he holds land on the *ukti* tenure, which is a land lease by a verbal agreement for one year. In this tenure the rates are not fixed; the parties make the best terms they can; but the *sosthi*, or permanent rates, are insisted on as far as practicable. Persons in authority no doubt take advantage of the *ukti* tenure. * * *Mirasadars* are not interdicted from holding lands on the *ukti* tenure, which carry a reduced rent, from the depreciated value of land, and the difficulty of letting it. Para. 4, contd.

III.—MR. HUGH STARK, *Chief of the Revenue Department in the India Board* (14th February 1832).

In a great portion of the Poonah territories the *meerass* tenure was found existing, but it is always combined with village institutions and privileges. The *meerassadars* are the acknowledged proprietors of the lands held by them. No person can acquire a *meerass* tenure without the consent of the brotherhood. The villages were so much attached to their tenures, that it enabled the Poonah Government to exact, in the form of revenue, much more from the *meerass* lands than they could procure from the same description of lands in the immediate neighbourhood not belonging to the *meerassadars*. * * There can be no question of the right of the *meerassadars* to hold at fixed rates; and should the Government be in a situation to reduce the tax, the country would rapidly improve (Q. 427, 428, 440).

5.—MEERASSADARS IN CUTTACK.

REVENUE LETTER TO BENGAL (10th December 1822).

I. The opinion varying from that of Mr. Melville, which Mr. Stirling describes as held by Mr. Ker, that the ryots had the means of protecting themselves against the zemindars, by making their own bargains as tenants against their own landlords in England, is an old theory, which you have unhappily had experience more than sufficient to disprove. Notwithstanding this opinion, Mr. Ker found a class of persons who are called Mourousee Mocuddims, and whom he recognised as possessing a right in the soil, and subject only to an ascertained rate of jumma. The name suggests the idea of a similarity with the class of *meerassadars* in some of the more southern provinces of India. That the foundation of the rights of these *meerassadars* was laid in those of the proprietary class of ryots, known in your provinces by the name of *khoodkasht* ryots, seems to be sufficiently ascertained. Where rights and prerogatives, beyond those of proprietary ryots, are claimed on the part of *meerassadars*, they seem in

APP. VIII. all cases to have been those annexed to the head ryots, the managers of the village, and in many cases, where ages of exaction had destroyed the rights and obliterated the claims of the general class of the *khodkasht* ryots, the claims of the descendants of those headmen, under the title of *meerassadars*, seem to be all that are recognised in existence of the rights of the proprietary ryots.

MEERASSADARS
IN CUTTACK.

Para. 6.

II. We are not informed what numbers Mr. Ker discovered of the Mourousee Mocuddims. The words employed lead us to infer that they are but few; and the natural inference appears to be that their rights are all that are now asserted of the rights of a general class of *khodkasht* ryots, a class which the measures you are pursuing for protecting the interest of the cultivating ryots may happily have the effect of reviving.

6.—REVENUE SYSTEM AND VILLAGE ORGANISATION.

I.—REVENUE ORGANISATION OR SYSTEM.

1.—SELECT COMMITTEE OF 1812.

Bengal:—Appendix II, paragraph 1, section VIII, and para. 2.

Northern Circars, Madras Presidency:—Appendix II, paragraph 1, section VII.

MADRAS PRESIDENCY.

Nearly the same system as in the Northern Circars prevailed in the modern possessions of the Company, which were not in the hands of poligars; for it was much the practice of the native Mahomedan Governments, and quite general under that of Mahomed Ally, the Nabob of the Carnate, and his son, to farm out the lands in extensive tracts, often whole provinces, for a certain number of years, to individuals, who sub-rented them, by villages, to the potails or headmen, who were left to collect from the other cultivators as they pleased. The oppression of the under-renters principally consisted, as they did in the Northern Circars, in levying private contributions on frivolous and unwarrantable pretences; in under-assessing the lands in the occupation of themselves, their relations, and friends, making up the difference by an over-assessment of the other village cultivators, more especially on those who were the poorest, and therefore the least able to protect themselves; in forcing the inferior ryots to cultivate their lands, and perform for them, free of charge, various other services; in monopolising the produce of the several villages, which they afterwards disposed of at an advanced price, and in applying to their own use, the allowances and perquisites of the pagodas and village servants, by which the parties were deprived of their rights, or the inhabitants, as was often the case, were obliged to make good the loss. One of the greatest abuses which was found to exist, as more immediately affecting the interests of Government, was the undue and irregular alienations of land.

II.—WILKS' MYSORE.

ige 118.

Every Indian village is, and appears always to have been, in fact, a separate community or republic, and exhibits a living picture of that state of things which theorists have imagined in the earlier stages of

civilisation, when men have assembled in communities for the purpose of App. VIII. reciprocally administering to each other's wants. [Here follows a description of village officials similar to that in Appendix II, paragraph 12, section III.] In some instances the lands of a village are cultivated in common, and the crop divided in the proportions of the labour contributed; but generally each occupant tills his own field; the waste land is a common pasture for the cattle of the village; its external boundaries are as carefully marked as those of the richest field, and they are maintained as a common right of the village, or rather the *township* (a term which more correctly describes the thing in our contemplation) to the exclusion of others, with as much jealousy and rancour as the frontiers of the most potent kingdoms. Such are the premature component parts of all the kingdoms of India. Their technical combination to compose districts, provinces, or principalities, of from ten to a hundred thousand villages, has been infinitely diversified at different periods by the wisdom or

VILLAGE OWNERS
IN INDIA, D.C.S.
(C.S.D.)

Para. 6, 10 and 11.

APP. VIII. those records; and to keep a register of all new grants and transfers of property, either by Government or by individuals." Mr. Elphinstone rates the Desmook's profits at 5 per cent. of the collections, together with as much more in rent-free land; and half of those perquisites to the Des Pandra, or District registrar.

VILLAGE ORGAN-
ISATION, DEC-
CAN.

Para. 6, contd.

(b).—COLONEL W. H. SYKES: LAND TENURES OF THE DECCAN (December 1830).

All lands were classed within some village boundary or other. Villages had a constitution for their internal Government, consisting of the *Patel*, or chief, assisted by a *Changala*, the *Kulkarni*, or village accountant, and the well known village officers, the *baraballo*; the numbers of the latter were complete or not, according to the population of the village, and the consequent means of supporting them. A few villages constituted a *naikwari*, over which was an officer with the designation of Naik. Eighty-four villages constituted a *Desmukh*, equivalent to a pergunna or county. Over this number was placed a *Desmukh*, as governor, assisted by a *Deschangla*; and for the branch of accounts there was a *Despand*, or district accountant and registrar. The links connecting the *Desmukhs* with the prince were the *Sar Desmukhs*, or heads of the *Desmukhs*; they were few in number. It is said there were also *Sar Despands*. The *Sar Desmukhs*, *Desmukhs*, *Naiks*, *Patels*, and *Changalas*, in short all persons in authority, were Mahrattas; the writers and accountants were mostly Brahmins.

(1). *Desmukhs* of such and such districts. Their rights were hereditary and saleable, wholly or in part. The concurring testimony of the people proves the hereditary right; and the proof of the power to sell is found¹ in Brahmins and other castes, and some few Mussulmans, being now sharers in the dignities, rights, and emoluments of *Desmukh*. * * The *Desmukhs* were no doubt originally appointed by Government, and they possessed all the above advantages, on the tenure of collecting and being responsible for the revenue, for superintending the cultivation and police of their districts, and carrying into effect all orders of Government. They were, in fact, to a district what a *Patel* is to a village; in short, were charged with its whole Government.

(2). *Despandahs* are contemporary in their institution with the *Desmukhs*; they are the writers and accountants of the latter, and are always Brahmins; they are to districts what *Kulkarnis* are to villages. Like the *Desmukhs*, they have a percentage on the revenue, but in a diminished ratio of from 25 to 50 per cent. below that of the *Desmukhs*. Their duties are to keep detailed accounts of the revenue of their districts, and to furnish Government with copies; they were also writers, accountants, and registrars within their own limits.

(3). *Patels*, usually called *Potails*,² or headmen of towns and villages. This office, together with the village accountant, is no doubt coeval with those of the *Desmukh* and *Despandah*. The Sanskrit term *Gramadikari*, I am told by Brahmins, would be descriptive of the lord or master of the

village, equivalent to the present term *Sawa Inamdar*, rather than that of *Patel*; *gram*, in Sanskrit, meaning village; *adikar*, the bearing of royal insignia, being pre-eminent. Originally the *Patels* were *Mahrattas* only; but sale, gift, or other causes have extended the right to many other castes. A very great majority of *Patels*, however, are still *Mahrattas*; their offices were hereditary and saleable, and many documentary proofs are extant of such sales. I made a translation of one of these documents, dated 104 years ago; it was executed in the face of the country, and with the knowledge of the Government. This paper fully illustrates all the rights, dignities, and emoluments of the office of *Patel*. He was personally responsible for the Government revenue; he superintended the police of the village, regulated its internal economy, and presided in all village councils.

(4). *Kulkarni*.—The next village tenure is that of *Kulkarni*; the office is of very great importance, for the *Kulkarni* is not only the accountant of the Government revenue, but he keeps the private accounts of each individual in the village, and is the general amanuensis; few of the cultivators, the *Patels* frequently included, being able to write or cypher for themselves. In no instance have I found this office held by any other caste than the Brahminical.

(5). *Mokuddum*.—The term is applied to the *Patel's* office. It is an Arabic term, and meaning "chief," "head," "leader," and is properly applicable to an individual only. The equal right of inheritance in Hindu children to the emoluments and advantages of hereditary offices, the functions of which could be exercised only by the senior of the family, rendered a distinctive appellation necessary for this person, and he was called *Mokuddum*. The sale of parts of the office of *Patel*, however, to other families, the heads of which would also be "*Mokuddum*," rendered the qualifying adjective necessary in all writings of half-*Mokuddum*, quarter-*Mokuddum*, &c., according to the share each family held in the office. Thus, His Highness Scendeh (Seindiah) is six-sevenths-*Mokuddum* at Jamgaon, the other *Mahratta* sharer one-seventh, and the like in other instances.

7.—HEADMEN OF VILLAGES.

APP. VIII. Whether the office was at first wholly elective, is uncertain; but considering the strong tendency of all Hindu offices to become hereditary, the office of headman probably had an hereditary element in very early times. The village might elect, but if it did not, the office generally went to the fittest member of the headman's family, usually with some preference to seniority. Sometimes, however, at least in modern times, the members of the family discharged its functions in rotation, the head of the family receiving, nevertheless, a larger share of the emoluments; thus there were sometimes found to be several *munduls* in a village. There are instances of the sale of the office by the occupants and also by the Government, on the dismissal or failure of heirs of the headman; but in general, the office could not be sold. The headman's tenure of office originally depended upon the approval of the village community, but later the zemindar sometimes nominated the headman. The State had probably always had a veto upon his appointment, since he was an officer of the State as well as the representative of the village, and the State could dismiss him at pleasure. In this way, the zemindar would come in some cases to assume the right of nominating as a superior representative of the Government; and in the decline of these communities, the villagers could have no choice but to acquiesce. The hereditary element nevertheless continued persistently to assert itself, even down to modern times, and in declining or decayed communities, and in most of the large talooks, descendants of the headman continued to claim the right to exercise the office on a vacancy.

VILLAGE HEAD-
MAN.

Para. 7, contd.

The State could
dismiss.

Page 28.

(2). The headman's most important functions, as far as we are concerned, were those of adjuster of the revenue on the village, and of collector of the revenue. He arranged all the details of the assessment, ascertained the extent of each holding in the village, estimated the growing crop, and saw the threshed corn heaps weighed, and apportioned the revenue accordingly, either by estimate or by the actual out-turn. He also received the share which represented the revenue, and delivered it in kind to the superior revenue collector, or at a later period to the *malgoozar*, or contractor for the revenue, or else handed it over for sale to the village weighman or the *muhajun* (or village merchant), who bought the grain of the village and advanced the amount of the revenue for payment in money. * * He settled the share to be paid by each ryot towards *deh khurcha* (or village expenses), and each ryot's share of the cost of watching the crops, and in Mahomedan times the amount of *abwab*, or extra assessment, that fell to each cultivator's share. He was bound to see that the *putwaree*, or village accountant, made the proper entries in his books. He was, besides, the village magistrate, and superintended the village police or *chowkeedars*.

Page 29.

(3). The headman's duties were numerous and responsible, and his emoluments were in consequence considerable. He had a few beegahs of land free of revenue for a garden, and paid a lower rate for the rest of his lands than ordinary ryots. He was allowed the services of one or more of the servile labourers of the village and of their families; and $\frac{1}{4}$ th or $\frac{1}{8}$ th of his grain crop was set apart for their maintenance before his crop was assessed. Or if he did not require their labour, he was sometimes allowed the deduction instead. * * *

(4). Although the headman had the strength of hereditary claims to support him, his office was not a freehold. He could be dismissed by the State, and then his services to the village being rendered useless, his emoluments ceased; but of course he retained his own lands, paying the ordinary revenue for them. He could not, however, be dismissed by the State, except for failure to make good the revenue assessed upon the village, and for the due payment of which he was responsible. In fact, he was in something like the same position as the zemindars subsequently, except that he was in some sort elected by the village, subject to the sanction of the State, and not appointed by the State.

APP. VIII.
VILLAGE HEAD-
MEN.

Para. 7, contd.
Page 31.

(5). He might, however, have advanced claims to be considered the absolute proprietor upon almost as good grounds as have been advanced by, or rather for, the zemindars; but in truth he was a mere official originally, having nevertheless land which he cultivated himself within the limits of his jurisdiction, just as the zemindars afterwards had. The position and emoluments of the zemindars seem to have been an extension of those of the headmen; many of the headmen became zemindars, and their rights as headmen were combined with, and merged in, their claims as zemindars.

Ibid.

(6). We have seen that the assessment of revenue was upon the individual cultivator; but the headman and the entire village were responsible for its payment. The cultivator was dealt with individually, but as a member of the village, and through the headman; and so strong was the custom of having the assessment settled with reference to the village usages, and to the position of the individual as a member of the village, that in the Madras Presidency some villages were found where the individual cultivators had been assessed direct by the Government for half a century, but had always re-distributed the assessment amongst themselves according to their own usages.

Page 31.

(7). The headman was not generally a farmer of the revenue, or a contractor for it, like the Mahomedan zemindars. In settling the amount to be charged to the village, he acted chiefly in the interest of the village; and when the amount was settled, he collected that amount in money or kind from the villages, chiefly in his capacity of revenue officer. He was responsible for its collection, but does not appear to have been so otherwise than as a representative at once of the Government and the village. The assessment, as I have said, was upon the cultivator individually; but the whole village, and the headman as its representative, was responsible for the collection.

Page 33.

(b).—GLOSSARY.—FIFTH REPORT.

Mocuddim.—Placed before, antecedent, prior, foremost. Head *ryot*, or principal man in a village, who superintends the affairs of it, and among other duties collects the rents of Government within his jurisdiction. The same officer is in Bengal called also *Mundul*, and in the Peninsula, *Gond* and *Potail*.

N. W. PROVINCES.

(c).—MINUTE OF GOVERNOR GENERAL (LORD HASTINGS),—31st December 1819.

When an individual is deputed by his neighbours to bargain on their common behalf with Government, there is no change of relations; he is

Sess. 1831
Vol. XI, App

APP. VIII. only the spokesman of the community. * * But a new capacity is conferred on him, if Government appoint him to be the person with whom, year after year, it is to settle the account. When the character of a zemindar is assigned to him, and responsibility for the payment of the aggregate rent is attached to him, Government virtually constitutes him a public officer. It necessarily invests him with the power of compelling, from the several families of the village, the payment of their respective portions of the general contribution, and our acquaintance with the propensities of the natives must make us sensible that such a power is likely to be misapplied in arbitrary and unjust demands.

VILLAGE HEAD-
MEN.

Para. 7, contd.

(d).—RESOLUTION OF GOVERNMENT (22nd December 1820).

Revenue Sele-
ctions, Vol. III,
page 240.

The persons who have been admitted to enter into engagements for the payment of the Government revenue, though ordinarily denominated in the Regulations zemindars, talookdars, and other proprietors of land, belong to various classes possessing very different rights and interests.

Paras. 74-5.

(1). In some cases, the sudder malgoozar is a person enjoying the full heritable and transferable property of the whole of the land for which he has engaged; such a malgoozar may properly be considered proprietor or malik of the land, whether cultivating the land himself, or leasing it to cultivators or farmers.

Para. 77.

(2). In other cases, the occupants and cultivators of the land consist of hereditary cultivators, mouroosce ryots (usually denominated khoodkasht or chuppabund) or some kinds of dependant talookdars, enjoying a permanent, hereditary, and in some cases transferable, right of occupancy, subject to the payment of a fixed rent, or of a rent adjusted by certain fixed rules; that is to say, the quantum of such rent and the mode of payment being regulated, not by the demand of the sudder malgoozar, but (in the absence of engagements contracted between the parties or their ancestors) by ancient usage and the rates of the pergunnah, mouzah, or other local division.

Para. 78.

In such cases, the sudder malgoozar, though admitted to possess a heritable and transferable property in the rents demandable from the inferior tenantry and ryots, is entitled, during the continuance of these tenures, to exercise only a restricted right of ownership, to be defined in each case by the nature and amount of the payments demandable from each ryot or dependant talookdar, and the other conditions of the tenure.

Para. 79.

The estate or interest, therefore, possessed by such a malgoozar consists, during the continuance of the under-tenant's tenure, rather in the profit derivable from the rent after discharging the stipulated revenue of Government, than in the property of the soil. He ought, consequently, to be recognised rather as a rent-holder than as the *malik*, or proprietor, of the land occupied by under-tenants of the above description.

Para. 81.

(3). In other cases, the sudder malgoozar appears to possess merely the right of collecting the Sircar's share of the produce, or the revenue demandable by the Sircar in lieu of it; the whole of the land being occupied by other persons having a full heritable and transferable property in the soil, subject to the payment of the Sircar's dues through

the sudder malgoozar, until regularly admitted to separate engagements, and the profits of the malgoozar properly consisting only in the difference between the amount which he is entitled to levy as revenue, or khiraj, from those proprietors, and the rent which he has contracted to pay to Government in perpetuity or for a term.

APP. VIII.
VILLAGE HEAD-
MEN.
Para. 7, contd.

In such case, the sudder malgoozar may be considered as the mere representative of Government; and though allowed a right of property in the incidence of his management, yet he possesses no property in the soil, nor any interest in the mehal, beyond the collection of the Sircar's revenue or khiraj.

Para. 82.

(4). In other cases, the sudder malgoozar possesses a portion of the lands for which he has engaged in full proprietary right, while the rest is occupied by other persons enjoying an equal right of property, subject, until regular separation, to the payment, through the sudder malgoozar, of the Sircar's khiraj, or by ryots or under-tenants possessing a hereditary right of occupancy. Of such malgoozars, who occur in village communities, there are several descriptions.

Para. 83.

Para. 84.

(5). With this variety in the classes of zemindars, it can be a matter of no surprise that very injurious consequences have followed from a system of management under which all persons coming under engagements with Government, and entered in the Government books as proprietors, have often been confounded as if belonging to one class, and have frequently been considered as the absolute proprietors of the lands comprised in the mehals for which they had engaged.

Para. 89.

(e).—RESOLUTION OF GOVERNMENT (1st August 1822).

The zemindars, talookdars, and mocuddums would appear to have differed in the extent, not in the nature, of the interests possessed by them. If any distinction can be drawn, the last mentioned class may be considered to have had a closer lien on the villages under their management, resembling, nearly, the potails of the villages in the territory recently acquired on the other side of India, who are indeed, it would seem, likewise denominated mocuddums. In Cuttack, too, as in the territory in question, the mocuddumy of waste or deserted villages would appear to have been sold by the superior officers of Government; but the purchasers in such cases would seem to have stood precisely on a footing with the hereditary mocuddums, who had derived their office from their ancestors. So also the nature of the tenure of the mocuddums and talookdars would appear to have been in all respects the same, whether they paid their revenue directly to the amil, or through an intermediate and hereditary officer.

Sess. 1831-32,
Vol. XI,
Paras. 150-7.

(f).—CIVIL COMMISSIONER AT DELHI (28th April 1820).

(1). Amongst the crowd of proprietors, the managers and leaders of the villagers are the mocuddums. These have been from time immemorial the persons through whom the rents of the villages have been settled and collected, and who have adjusted the quota of each sharer.

Revenue-Sess.
Vol. XI,
Paras. 150-7.

APP. VIII. They are supposed to have been originally either selected by the proprietors, or to have raised and elevated themselves to the office from their superior knowledge and address in making terms for the villages with the officers of Government. The office is not necessarily hereditary, though usually descending to one of the sons of the family, from the superior opportunity which they have of inheriting the information of the parent; nor is the number fixed or limited, though seldom exceeding eight or ten.

VILLAGE HEAD-
MEN.

Para. 7, contd.

Para. 16.

(2). The mocuddums were rewarded either by the other sharers granting them a certain proportion of their own grain, by rating their cultivation less than their own, or by allowing them the produce of one plough untaxed. Besides this, the mocuddums used occasionally, if opportunity offered, to impose upon the other sharers by stating the jumma required by the ruling power at a sum beyond that really fixed, and then dividing the surplus amongst themselves, and they would similarly, in concordance with the Putwarry, enhance the statement of the village expenses and pocket the difference. * * *

Para. 195.

(3). The authority of the mocuddums was also at times very oppressive in other respects, and they became a little aristocracy; but in general, they were the safeguards of the community, and had its welfare at heart. They were necessary to the people as the only individuals who attended to their interests, and without them the Government could in general effect nothing.

(g).—BENGAL GOVERNMENT (1825 or 1825).

There was evidence to show that the term mocuddum is equally applicable to the headman and representative of a body of zemindars, possessing a clear heritable and transferable right of property in the soil, and subject only to the payment of their quota of the Government assessment, and of the village expenses, as to the headman and representative of a body of cultivators claiming no transferable property, and paying, along with the Government revenue, *a clear rent or zemindary russoom to one or more proprietors*. In the former case, it was obvious that the mocuddum tenure might be regarded as superior in degree, at least where the mocuddum was able to preserve among his fellows the superiority which appeared to have belonged by custom of the country to the managing malgoozar, and to have secured any special emoluments of office. The mocuddum tenure, in the above case, stands to the zemindary tenure in the relation of a director to any general body of proprietors, whose affairs he may be chosen to represent, such director being himself also a proprietor and, as such, drawing an income from his property distinct from the emoluments of his office, but eligible for that office in virtue of his proprietary character.

(h).—SIR C. T. METCALFE (7th November 1830).

(1). There is no point on which we ought to be more careful than as to the acknowledgment of pretended proprietors in the Western Provinces, other than the real members of the village communities.

There is reason to suppose that in many a village, where the real proprietors were once numerous, some upstart fellow has acquired, without right or by fraud, an ostensible pre-eminence, and now pretends to be the sub-proprietor. In any settlement more precise and determinate than those heretofore made, it will be necessary to be most cautious not to sacrifice the proprietary rights, such as they are, of the numerous proprietors of villages, to the pretensions of one or a few who may have brought themselves more into notice, and obtained predominance, whether by fair means or by foul. Investigation must be made in each village; for the names recorded in the Collector's books may be either those of persons who are not proprietors, or those of persons who being part proprietors are not exclusively so, but representatives of the body of village proprietors. * *

APP. VIII.

VILLAGE HEAD-
MEN.

Para. 7, contd.

(2). By far the most numerous class of settlements to be made will, I conclude, be those with village communities. In such settlements the mocuddums, or headmen, by whatever designation known, come forward to conclude the settlement as the representatives of the village community. I believe that it is not an uncommon practice to consider those who sign the engagements as exclusively responsible, in their own persons, for the payment of the revenue. In my opinion, although undoubtedly responsible as part owners of the village lands, and additionally responsible as collectors of the revenue, and managers of the village, in which capacities they usually receive a percentage on the revenue, which allowance is termed mocuddummee, they are not exclusively responsible, nor as landowners more responsible than the other landowners of the village which they represent. Out of this practice of considering the mocuddums as the contractors for the revenue, instead of regarding them as the headmen and representatives of the village communities, has arisen, I fear, the more serious evil of considering them as the only land owners of the village, and thus annihilating the rights of the rest of the village community.

Page 333.

(i).—COURT OF DIRECTORS.

The Hon'ble Court have at the same time stated a decided opinion that (Resolution, 22nd December 1820, paragraph 191) a proprietary right should be no further acknowledged in the mocuddums than as concerns the lands on which they have a possessory claim, and that the same right should, on the same principle, be admitted in the case of the other occupant cultivators.

BENGAL.

(k).—SIR J. SHORE (*June 1789*).

(1). In almost every village, according to its extent, there is one or more head ryot, known by a variety of names in different parts of the country, who has in some measure the direction and superintendence of the rest. For distinction, I shall confine myself to the term *Mundul*; he assists in fixing the rent, in directing the cultivation, and in making the

Page 31.

P. VIII. collections. This class of men, so apparently useful, seem greatly to have contributed to the growth of the various abuses now existing, and to have secured their own advantages, both at the expense of the zemindar, landlord, renter, and inferior ryots.

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VILLAGE PRO-
PERTY AND
VILLAGE ZEMIN-
DARS.

Para, 8.
1. 244.

(2). Their power and influence over the inferior ryots is great and extensive; they compromise with the farmers at their expense, and procure their own rents to be lowered, without any diminution in what he is to receive, by throwing the difference upon the lower ryots, from whom it is exacted by taxes of various denominations. They make a traffic in pottahs, lowering the rates of them for private stipulations, and connive at the separation and sequestration of lands. * *

8.—VILLAGE PROPERTY AND VILLAGE ZEMINDARS.

I.—BRIGGS on the Land Tax in India.

The revenue claimed by the Hindu sovereign in ancient times was not regulated by the superficies cultivated, but by the quantity of the produce. The sovereign's share rose and sunk with the prosperity or adversity of the husbandman. As regarded the latter, the sovereign's portion was fixed and definite; it varied not with the metallic value of the grain, nor was it affected by any other circumstance; the proportion was ever the same. In the country extending from Nellore, on the north, as far south as the Coleroon river, the ancient cultivators of villages held a certain quantity of land rent-free, denominated *grama-maniam*, the township liberties, which enabled them to give a larger proportion for those lands paying tax to the sovereign. Besides this advantage, each of the original proprietors belonging to the corporation received certain fees from the tenants paying tax to Government. These the Board of Revenue particularly define not to be the fees paid to the village officers; they must be viewed as the remains of what were once land rents, but which, owing to the oppression of modern governments, have sunk into a mere peppercorn rental.

From this description, selected from the report alluded to of the Madras Board of Revenue, I conclude that the whole of the land in the tract of country described, belonged originally to village communities, as real property, either held in common or divided in severalty.

II.—LORD MOIRA'S REVENUE MINUTE (21st September 1815).

SESS. 1831-32,
Vol. XI, App. 9,
para. 78.

The Board of Commissioners have sought to uphold the village zemindars; and in the Upper Provinces, as well as in Behar and Benares, no doubt can be entertained that these have the only hereditary possession, and are the only persons fundamentally connected with the soil.

Para. 81.

Your Hon'ble Board is well acquainted with the theory of the property and economy of villages in the possession of the indigenous proprietors or cultivating zemindars. The rights of all are well ascertained and defined, and though the divisions and sub-divisions appear intricate to a distant observer, they are productive of no confusion amongst them-

selves, it being only when disturbed by the operation of external causes APP. VIII. that the general harmony suffers interruption.

This system of village property was yet in being in the Upper Provinces when they fell under our dominion; for the farmers and officers of former Governments, though arbitrary and unmerciful in their exactions, seldom had the hardihood to attempt to interfere with this state of real property. The village community was thus complete; and though there was usually one amongst the sharers whose name was entered in the public accounts as the person who collected and paid the revenue, he was merely a *malgoozar*, in the same manner as a farmer or officer of Government, and the circumstance of his name being so entered was never held to convey any special privileges or exclusive rights.

VILLAGE PROPERTY AND VILLAGE ZEMINDARS.

Para. 8, contd.

Para. 82.

III.—REVENUE LETTER TO BENGAL, CEDED AND CONQUERED PROVINCES (15th January 1819).

The Board of Revenue, in another passage of their letter, with an express reference to these village zemindars, state that “the mistake of making the perpetual settlement with rajahs as the proprietors of the whole of the lands composing their *rajes*, has chiefly affected an intermediate class, the village zemindars, to whom no compensation can now be made for the injustice done to them by the transfer of their property to the rajahs. Indeed, the whole of this valuable class of landholders may be considered to be extinct in the *Lower Provinces*, with the exception of a few fortunate individuals who have preserved their estates under the names of independent and dependent talookdars, by the precaution of their ancestors in providing themselves with written acknowledgments of the general zemindar, who, in consequence of the interpretation put on that title, was considered by the terms of the perpetual settlement as the universal proprietor of the soil, and the fountain from which alone any other person could derive a property.”

Sess. 1831-32, Vol. XI, App. II, paras. 59 & 60.

These village zemindars were no other than those ryots of the villages who are distinctly described by the Board of Commissioners in their official correspondence, and by Lord Hastings in his minute, as the real proprietors of the land in their respective occupations.

IV.—SELECT COMMITTEE (1812).

(1). *Benares*.—On the relinquishment by the Rajah of Benares of his functions as zemindar, and in the course of the president's investigation of the affairs of the province, the landholders, with whom the settlement was to be made, appeared to be on a footing somewhat different from the zemindars of the Lower Provinces. They are officially designated “for the most part as *village zemindars*, paying the revenue of their lands to Government jointly with one or more *putteedars*, or partners, descended from the same common stock:” the designation adds that “some of these *putteedars* have had their interior puttees or shares rendered distinct, whilst those of the major part still continue annexed to, and blended or in common with, the share or shares of the principal of the family, or of the headman among the brethren, being either one or more, whose names have been usually inserted in the pottahs, caboolecats, and other

Fifth Report.

APP. VIII. engagements for the public revenue." There are others denominated "talookdars, who have depending on them a greater or less number of village zemindars, many of whom retain the right of disposing by sale of their own estates, subject of course to the payment of the usual jumma by the talookdar." These talookdars, by the terms of the perpetual settlement, "are left to assess their village zemindars, either in proportion to their own sudder jumma, with some addition for the charges of management, or according to the extent and value of the produce, as local custom or the good will of the parties may direct." It should appear from this that more distinct traces of the Hindu revenue system remained in Benares than existed in Bengal, during the enquiries which were prosecuted, preparatory to the permanent settlement of the land revenue in that province.

Fifth Report.
Ibid., page 50.

(2). *Ceded and Conquered Provinces*.—The landholders were chiefly of the class which has been described in Benares as village zemindars; but there were others of higher rank, who bore the title of rajah, and appear rather in the condition of tributaries than of subjects. While these persons discharged their assessment of revenue, they were left to the exercise of absolute dominion within their limits.

V.—BOARD OF COMMISSIONERS (20th May 1815).

Revenue Selec-
tions, Vol. I,
page 371, para.
6.

These village zemindars (*viz.*, those mentioned in Section III,) are, however, still numerous in Behar, and more so in Benares; and they will be found in the large estates of Behar to maintain their individual property against the general right created by the perpetual settlement, by the possession of the phulker and bunker, and in some instances the julkar also.

VI.—RESOLUTION OF GOVERNMENT (22nd December 1820).

Vol. III,
page 280, para.
218.

Although, as already observed, the rules of 1803 contain no specific provision for determining the mode in which the settlement of putteedary estates should be made, such as that contained in Regulation II, 1795, yet there are several specific enactments whence it may be inferred that the inferior putteedars (that is, the non-engaging proprietors in the Western Provinces) were designed to be regarded as a species of under-tenant, holding, until separated, under the selected malgoozar or recorded proprietor, in a manner analogous to the holding of an ancient talookdar in one of the Bengal zemindaries, and that, consequently, their tenures were to be maintained notwithstanding a sale in default by the engaging putteedars.

9.—KINDS OF VILLAGE PROPRIETORS AND CULTIVATORS IN THE NORTH-WESTERN PROVINCES.

DELHI TERRITORY (*Mr. Fortescue, Civil Commissioner, 28th April 1820*).

Ibid., Vol. III,
page 103, et seq.
para. 13.

I. (a). *Proprietary right in villages*.—In all villages of old standing, that is, those prior to the introduction of the British power into the

territory (for a period of one hundred or one hundred and fifty years, say), the right of property in the land is unequivocally recognised in the present agricultural inhabitants, by descent, purchase, or gift. APP. VIII.

VILLAGE PRO-
PRIETORS.

Para. 9, contd.

(b). Each village is imagined to have belonged to one caste or clan of persons, as Jauts or Goojars, &c. The smaller villages have more generally preserved their integrity in this respect than the larger, which incorporated other sects, and in this way often derived their numerical superiority and strength. Para. 14.

(c). In deserted villages which have been re-peopled since the introduction of the British Government, though the proprietary right has not been distinctly stated to be in the parties inhabiting them, it is yet pretty well understood to belong to them. Para. 15.

II. *Nominal division of the villages.*—The villages are usually divided into an indeterminate number of superior divisions, called *panes*, seldom exceeding four or five, which are again sub-divided into *tholas* of no fixed number, and these are again subject to still smaller separations. The grand division into *panes* and the sub-division of *tholas* are those which are reported to have happened early after the first establishment of the village, and they are supposed to have been generally maintained undisturbed. Para. 16.

(b). This primary distribution is conceived to have been accidental, and resulting from the number or the interest of the persons originally entitled to share. The divisions by *panes* and *tholas* are now more nominal than practical, with respect to the definition either of the extent of the proprietary right in the lands, or to the proportion of the public demand; although occasionally those terms do denote specific shares to particular families, clans, or classes, and regulate the quota of the aggregate jumma or public demand chargeable. Ibid., para. 17.

III. (a). *Proprietary division of the village land.*—The lands appertaining to the village are almost universally divided amongst the descendants of the original stock, or those holding in right of them, as above described. Some adjustments have taken place long prior to the memory of those living, and thus separated families or clans. Others have recently happened, and further division might again occur. These divisions of the lands depend upon the pleasure or convenience of the parties interested. Ibid., para. 18.

(b). The divisions are effected either by integral allotments of the land to be divided, or by fractional parts of the aggregate quantity of each description of land according to its quality. By the former method the shares are compact; by the latter they consist of many particular spots situated in different quarters, and a proprietor will thus possess a share consisting of a few beegahs, or perhaps but a small fractional part of one, made up of the rubbee, of khureef, of pasturage, and firewood, &c. Para. 19.

(c). The possession by the sharer of the land thus divided off is determined either by agreement or by a kind of lottery, as putting billets with the names or descriptions of the lots and of the sharers into two separate jars, from each of which a paper is drawn, uniting the sharer and his share. Ibid., para. 20.

P. VIII. IV. *Inheritance, Sale, &c.* (a).—If a sharer dies without heirs, lands are at the disposal of the rest of the sharers of his division, who *pane* or *thola*.

VILLAGE PRO-
PRIETORS.

a. 9, contd.
a. 23.

ra 25.

(b). A sharer cannot dispose of his landed property by beque gift, nor introduce a stranger without the general acquiescence of *pane* or *thola*, or other division to which he belongs; nor sell it, the sharers thereof in succession, up from each superior division, rejected it on the terms proposed and to themselves meet. In farm mortgaging, placing in trust, deposit, or management, and the the tacit will of the brotherhood is sufficient; but neither these nor of temporary relinquishment, nor the absolute estrangement of it ever by sale, are prevalent. Every effort by the first-mentioned method of temporary relinquishment, as well as dishonesty even, has been to meet necessity or misfortune, before the sharer could be brought to abandon his connection, home, and inheritance.

Ibid, para. 28.

(c). No circumstance, however, nor any other short of an actual implied demonstration of the will of the party to abandon his land sufficient to divest him of his property in it. No length of occupancy by another, nor of absence by the inheritable owner, is a defence. Mortgages are ever open to equitable redemption, and the mortgagor has no power to foreclose.

Para. 30.

(d). But it may so happen that an outlaw, or one forced to quit village for some offence, or a disorderly and troublesome person (or to the ruling power or to the other sharers), is deprived of his property, or, on the other hand, that an occupant of long residence, under circumstances in his favour, such as an understanding that the lands deserted, that they would become his by residence, or that he had put out money on them, and the like consideration, may gain the right to the property. Questions of this kind were, as all others connected with land and rents, settled by the village assemblies in what they held to be, and I believe to have been, an equitable manner.

V.—DESIGNATIONS AND RIGHTS OF CULTIVATORS, OTHER THAN ORIGINAL PROPRIETORS.

Ibid, para. 32.

(a). *Four classes of such cultivators, viz.*, the old residents (or *ryots*), the itinerants (*pahee*), the hired (*kumera*), and the partial cultivators (*knmeen*), though these appellations, particularly the first and the last, do not exclusively apply to land-tilling, either in this territory or in other parts of the Company's provinces.

Para. 33.

(b). *Old residents*.—They attain to the highest rights of the village subordinate to those of the proprietors. They are usually ancient families of the village, and have cultivated the same lands. They come thither from various causes, as for security, from connection with some of the inhabitants, by invitation, or other inducement of profit and convenience. So long as they continue to discharge their proportion of the public assessment due from the extent of land that they occupy, they are not liable to ejection, nor are their descendants who inherit from them. But if they fail in this, or abandon the land, and no individual sharer should have an exclusive right, it reverts to the division.

or *thola*, or *pane*, as the case may be. These cultivators are little distinguishable from the proprietors in other respects, except that they do not necessarily acquire rights of ownership; though even this point is scarcely questioned in respect to residents of very lengthened occupation, and under the circumstances stated in paragraph 30 (Section IV—c, above).

APP. VIII.
CULTIVATORS.
Para. 9, contd.

(c). The condition of these persons, however, is much affected by the state of the village. Should the extent of land therein be limited, compared with the number and means of the proprietors, and these should wish to possess themselves of the lands, they will force the resident cultivator to contribute, at least as fully on all scores as themselves, towards the liquidation of the public jumma, or else to abandon the soil. If, on the contrary, there is more land than the zemindars can make use of, they will continue to allow the resident terms equal, or nearly so, to those granted to itinerant or *pahee* cultivators; the advantage of the proprietors, in this case, being the same as in that by perfect *pahee* cultivation in their village, viz., the proportion of the public jumma which they can discharge from the contributions of these new proprietors, and the surplus from their own that may be thus saved to them.

Ibid, para. 34.

(d). *Itinerant or pahee cultivators* are always residents of a different village. The scarcity of good uncultivated land in their own village, and the abundance of it in the one to which they proceed, is generally the cause of these species of cultivation. There are, however, at other times, more interested reasons, as the desire to avoid in their own village contributing as zemindars, while they reap as *pahees* in the neighbouring villages. In this way they secure a larger surplus to themselves from the land they cultivate, while they abandon their own to the profits of pasturage and cattle.

Para. 35.

(e). These cultivators can relinquish, and the owners of the land can prohibit the *pahee* cultivators, at pleasure, mutually, though from their desire to profit by the cultivation of the superabundant lands, the proprietors generally favour these people, and they usually get terms equal to a contribution of a fourth less of their produce than established cultivators.

Para. 36.

(f). *Hired cultivators or kumeras* are of all castes and classes, being mostly of the description of daily labourers, whom we have in India under the denomination of coolies or the like. They are employed chiefly by those who are above actual labour themselves, and in good circumstances. They are permanently or temporarily engaged. In the former case they earn from 3 to 4 rupees per month; or they agree to receive one-sixth or so of the produce of the land, with half a seer of grain per day, and at each harvest, clothing. In the latter case they get their clothes and food per day, with a rupee or two at the end of the month.

Para. 37.

(g). *Partial cultivators or kumeens* are those whose occasional leisure from their primary occupations permits them to cultivate a few beegahs of land. They are either the professional men of the villages, as carpenters, blacksmiths, &c., or the servants of it, as the sweepers, messengers, &c. The term *kumeen* denotes inferiority, and is applied to this part of the community by the land owners, who conceive themselves to be of the first rank, and the others of low condition. * * The kumeens

VIII. are almost always paid for their professional assistance by the proprietors, at a stated allowance of grain from each plough, generally 10 seers, with 20 seers each for the blacksmith, the carpenter, the water-carrier, and the tailor, 5 seers for the messenger, and 1 maund for the shoe-maker, cobbler, and leather-dresser; as the lowest allowance in all these cases.

10. It is evident from the preceding extracts that the rights of the *khoddkasht* ryots were the same as those of the village zemindars, or proprietors of land in village communities, and that in these communities, as in the Lower Provinces of Bengal, where the organisation of those communities had been impaired by the usurpations or encroachments of zemindars, the cultivators, other than *khoddkasht* ryots in a village, consisted of two classes, *viz.*, those who by long residence in a village, though belonging to another village, had rights of occupancy, and others who were tenants under mutual agreements with the proprietors of land, or tenants at will. Extracts illustrative of the rights and obligations of these classes of ryots might accordingly be continued in this appendix; but it will be convenient to devote to them a separate, or the next, appendix.

11. The salient points in this appendix are that—

I. The cultivating proprietor is the one at whose risk or charge the land is cultivated.

II. Under native rule the land was the property of the cultivator, to whom was left at least enough for seed, and for support of his family till the next crop, thus keeping him out of debt.

III. The classes of cultivators recognised in Mahomedan law, including cultivating proprietors, corresponded to those in village communities under the Hindu system.

IV. Though the separate properties in each village were sub-divided, under the Hindu laws of inheritance, among the descendants of the original sharer in each property, yet the original property was preserved in its entirety under the management of so many only of the sharers as were required to cultivate it, the rest of the sharers taking to other occupations or lands.

V. The Select Committee of 1812 considered it to be established “by numberless records, and by none more distinctly than by ordinary form of a deed of sale,” that cultivating proprietors were undisturbed in their property so long

as they paid the Government rent as fixed at what was a fair assessment defined by local usage.

VI. The resident cultivators had a hereditary right in their lands; not so the temporary or stranger cultivators. The rent paid by the former was higher than that paid by the latter.

VII. From the sparseness of population, and the great extent of culturable waste land, necessarily the class of *khloodkasht* ryots or resident cultivators preponderated. Mr. A. D. Campbell, in his able summary of the evidence given before the Select Committees of 1831-32 and previous years, described them as "the most numerous and most important class of all" (para. 3, III*d*); and Mr. J. S. Mill stated in his evidence in 1831 "the *khloodkasht* ryots I consider to have been universal in India, and the land to have been held by them with few exceptions" (para. 3, IV, Question 3514). The rates paid by these *khloodkasht* ryots, who were the bulk of the ryots, formed necessarily the pergunnah rates; and as the rates paid by the *khloodkashts* were rates fixed and long established by custom, and as they were higher than the rates paid by temporary cultivators, it followed that the Government declared permanent rates of rent for all classes of ryots when by law they limited the enhancement of the rents of the unprotected classes of ryots to the pergunnah rates.

VIII. The village organisation included officers for revenue and police duties corresponding to the functions of zemindars in Bengal, and remunerated in the same way, *viz.*, by assignment of land in the village. The village official, who more especially resembled the zemindar, was the village headman, who was an officer of the State, as well as representative of the village. He held on the same tenure as the zemindar in Bengal, *viz.*, under a liability to dismissal, though his office was hereditary; and he encroached on the rights of other cultivating proprietors in precisely the same way, and by the same means, as the zemindars in the Lower Provinces of Bengal; and by no other means more effectually than those which were placed within his reach when he became the engager with Government for the Government revenue on behalf of his co-proprietors in the village. The mistake committed by Government in describing, as proprietors, the engagers with it for the Government revenue, was a fruitful and the most potent cause of the confusion and destruction of the proprietary rights of the other cultivating proprietors;—

VILLAGE
PROPRIETORS
Para. 11, co

VIII. (para. 7, *a*, *c*, and *d* 5). In the permanent settlement of Benares, the rights of cultivating proprietors, as distinguished from those of the zemindars who engaged with Government for the revenue, were ascertained and recorded (para. 8, sections II and IV), and the difficulties arising from enhancement of rents in Behar and in the other provinces under the Bengal Government are not experienced in Benares; nor are they experienced in the permanently-settled zemindaries in the Madras Presidency, the pergunnah rate of rent payable by the ryots, at the time of introduction of the permanent settlement, having been recorded by the Collectors.

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 1 GB
 ETORS.
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 contd.

APPENDIX IX.

RYOTS.

APP. IX.

1.—DEFINITION OF A RYOT.

The cultivator who, whether by borrowing or in any other way, provides seed, cattle, implements, and labour for the land which he cultivates. See Appendix VIII, paragraph 1, sections II, III, and V, and paragraph 2, section I, *e* and *g*.

COUNTRY CAN-
NOT PROSPER
UNLESS THE
RYOT PROSPERS.

Para. I.

2.—THE COUNTRY'S PROSPERITY DEPENDENT ON THE RYOT'S.

I.—SIR J. SHORE (*8th December 1789*).

Our measures have a view to permanency; but before we declare it, prudence dictates that we should have some certainty that the Government will not suffer by its liberality, and that the benefits of it will extend to that class whose labours are the riches of the State (*para. 26*).

Fifth Report
page 431.

II.—LORD CORNWALLIS (*18th September 1789*).

It is for the interest of the State that the landed property should fall into the hands of the most frugal and thrifty class of people, who will improve their lands and protect the ryots, and thereby promote the general prosperity of the country.

Page 473.

III.—MR. STUART'S MINUTE (*18th December 1820*).

It has always been regarded as one great advantage of the system of dividing the actual produce of the soil between the Government and the cultivator, that it gives the sovereign an immediate and powerful concern in the welfare of the agricultural community. We find accordingly that the protection of those classes, of the inferior orders more especially, is a permanent object in the institutions of native governments; we also see that it is celebrated in their histories and public acts and popular sayings as the chief virtue of a government.

Revenue Selec-
tions, Vol. III,
page 218.

IV.—COURT OF DIRECTORS (*9th May 1821*).

We are certainly most desirous not only to see the ryots duly protected in their rights, but also to see them thrive and prosper; for upon this, more than upon anything else, depends the welfare and improvement of the country (*para. 60*).

Ibid, page 110.

APP. IX. V.—MR. J. MILL (*4th August 1831*).

COUNTRY CAN-
NOT PROSPER
UNLESS THE
RYOT PROSPERS.

Para. 2, contd.

I have no doubt that it is through the 'ryots, and by giving a proper protection to their property, and to themselves in the exercise of their industry, and through that mainly, that the improvement of India must take place (*Question 3299*).

Third Report,
Select Com-
mittee, 1831.

VI.—SELECT COMMITTEE, 1831-32 (*6th December 1831, 16th August 1832*).

Sess. 1831-32,
Vol. XI,
page 7.

(1). The proper ascertainment and recognition and security of the several tenures and rights within the villages are objects of the highest importance to the tranquillity of the provinces, and will greatly tend to the repression of crime. The natives of India have a deep-rooted attachment to hereditary rights and offices, and animosities originating from disputes regarding lands descend through generations.

(2). In the general opinion of the agricultural population, the right of the ryot is considered as the greatest right in the country; but it is an untransferable right. It seems questionable whether the ryot himself can transfer it, or whether the Government can transfer it.

(3). The ryot may, if harassed by our assessment, leave his lands, quit the neighbourhood, and return when he chooses and re-claim the lands, and ryots holding them will always resign them to him. The right never seems to die.

(4). This part of the evidence before your Committee has been particularly adverted to, as it is of so much importance, that the Government cannot be too active in the protection of the cultivating classes; for the vital question to the ryot is the amount of assessment which he pays. In corroboration of this remark, your Committee refer to a letter from the Court of Directors to the Governor General in Council at Bengal, dated as far back as 19th September 1792, in which they say: "In giving our opinion on the amount of the settlement, we have been not a little influenced by the conviction that true policy requires us to hold this remote dependency under as moderate a taxation as will consist with the ends of our government."

VII.—MR. NEWENHAM (*7th May 1832*).

69 and

Looking at the old-established and populous villages, one finds men who have come down, by general acknowledgment and their own, from time immemorial, generation after generation, who have stood in times of difficulty firm to the village, whilst the zemindars have been in a state of perpetual change; and their being so constantly resident, their digging wells and water-courses, planting trees and cultivating the same fields from father to son, shows that they have a claim upon the soil stronger probably than any other claim that exists in the country; and as far as I know, from the general opinion of the agricultural population, I believe that the right of the ryot is the greatest right in the country, * * and that security of the ryot is indispensable to the general prosperity of the country.

VIII.—MR. JAMES MILL (*11th February 1833*).

APP. IX.

Excess of exaction, by which I understand any encroachment upon the full remuneration of the cultivator, impedes agricultural improvement by impeding the accumulation of capital in the hands of the cultivator, and that equally whether the exaction is made by Government or by an intermediate party.

KHOODKASHT
RYOTS.

Para. 3.

Sess. 1831-32,
Vol. XI, page
278.

3.—KHOODKASHT RYOTS AND HEREDITARY OCCUPANCY.

I.—MR. HALHED (*1832*).

(1). Hereditary ryots claim as the descendants of an original proprietor, whose privileges of administering the revenue affairs of the parish have been lost or forfeited in some former age; sometimes they do not advance such high pretensions, but claim a right to hold by long prescription; they can scarcely be said to be independent of the zemindar malgoozar (mocuddum), who has the power, and generally the will, to inflict many annoyances on those who act counter to his wishes; and under the regulations this power is unlimited, but under the ancient régime, so long as they paid the prescribed amount of the tax leviable upon the crop they might raise upon the land, they could not be ousted from it.

Page 79.
The demand
upon the heri-
tary ryot was
fixed demand.

(2). In some parts of the country (Lower Provinces), after the permanent settlement, the *raeents* were so fortunate as to obtain a recognition of their rights; in the 24-Pergunnahs, for instance, they cannot be ousted from their lands; and in some other districts (Chittagong, Dinagepore, part of Tipperah, and Sylhet) the providence and foresight of the revenue officers secured to them their privileges, by requiring the malgoozars, on the promulgation of the code, to grant pottahs, in which the pergunnah rates were distinctly specified, and the quota of tax, in kind or money, leviable from the cultivator expressly limited.

II.—SIR J. SHORE (*June 1789*).

(a). I suppose that the rents in Bengal may be collected according to ascertained rates throughout two-thirds of the country; and notwithstanding the various abuses which I have detailed, it is evident that some standard must exist; for, without it, the revenues could never be collected from year to year as they have been. Exactions on one side are opposed by collusions on the other; but we may with certainty conclude that the ryots are as heavily assessed as ever they were.

Fifth Report,
page 206,
para. 100.

(b). The land is divided into ryotty and khamar; the rents of the former are paid in money, and of the latter in kind. The usual division is half to the zemindar and half to the cultivator; but some part of the expenses generally fall upon the latter, in addition to the stipulated proportion.

Ibid., para. 225.

(c). Pottahs to the *khloodkash* ryots, or those who cultivate the land of the village where they reside, are generally given without any limitation of period, and express that they are to hold the lands, paying the rents from year to year. Hence the right of occupancy originates; and

Ibid., para. 225.

APP. IX.

KHOODKASHT
RYOTS.

Para. 3, contd.

Fifth Report,
para. 107.

it is equally understood as a prescriptive law that the ryots who hold by this tenure cannot relinquish any part of the lands in their possession, or change the species of cultivation, without a forfeiture of the right of occupancy, which is rarely insisted upon; and the zemindars demand and exact the difference. I understand also that this right of occupancy is admitted to extend even to the heirs of those who enjoy it.* But though his title is hereditary, yet the ryot cannot sell or mortgage his land.

(d). *Pykasht* ryots, or those who cultivate the lands of villages where they do not reside, hold their lands upon a more indefinite tenure. The pottahs to them are generally granted with a limitation in point of time; where they deem the terms unfavourable, they repair to some other spot.

When Sir John Shore wrote, there was superabundance of waste lands, and the competition was for ryots, not for land. Hence, probably the khoodkasht ryot could not sell his land. But when land acquired a market value, the khoodkasht did sell. In a petition, dated 27th September 1851, bearing, among others, the signatures of Babus Sumbhunath Pundit, Unnodaprosad Banerjea, Govindpersad Bose, and Hurrishunder Mookerjea, all well known authorities, and of whom the last mentioned was Editor of the *Hindoo Patriot*, and afterwards Assistant Secretary to the Bengal British Indian Association, the following passage occurs:—

(a). It has, we believe, not yet been denied that the interest of a khoodkasht tenant is transmissible by sale, gift, and succession, and that his right of occupancy does not terminate by any of those acts or omissions which determine the rights of leaseholders generally. In certain points of view, a khoodkasht tenancy constitutes the highest title to real property known to the laws of this country; in every respect, the rights of a khoodkasht tenant are among the most valuable that form the subject-matter of judicial inquiry.

(b). *N. W. P. Board of Revenue Circular, 26th September 1856.*—Although the rights of permanent cultivators are, in the Notification of Government, and in the present Circular, spoken of as implying solely a fixed and heritable possession, it is not to be inferred that cultivators can possess no other rights. The power of transferring his holding to another occupant—the original cultivator remaining responsible to the landlord—has long been admitted by the Government. The practice of permitting the cultivator to mortgage his fields is reported to exist in various parts of the country. And wherever transfers of rights of occupancy, subject to the regular payment of rent to the proprietor, are acknowledged in the practice of the people, they must be recognised by the Government and its officers.

III.—INDIAN GOVERNMENT (October 1790).

Distinct from these claims are the rights and privileges of the cultivating ryots, who, though they have no positive property in the

soil, have a right of occupancy as long as they cultivate to the extent of their usual means, and give to the sircar or proprietor, whether in money or in kind, the accustomed portion of the produce.

APP. IX.
—
Кhoodkasht
Ryots.

IV.—CEDED AND CONQUERED PROVINCES (*5th January 1819*) (BOARD OF COMMISSIONERS).

Although in pykaust tenures the landholder is stated to be bound by no fixed rules, but to make the best terms he can, these terms will of course be governed by the mutual interest of the parties, and not by his own discretion, while the pykaust tenants hold the lands from only year to year (paragraph 7).

Revenue Selections, Vol. III, page 171.

These remarks apply, of course, only to the labouring tenants, or assamees, who are unconnected with the property in the soil. The numerous class of putteedars, and all the ramifications from the original stock, hold their lands at a fixed rate, and any attempt of the ostensible zemindar, or the person under engagements with Government, to innovate thereon, would be resisted by open force (*para. 8*).

V.—MR. H. COLEBROOKE (*1815*).

At the period of the decennial settlement, subsequently declared permanent, the rights of zemindars and ryots, as well in relation to Government as to each other, underwent much discussion, of which a great portion is to be found recorded on the proceedings of this Board. Among many important points, one, which was then distinctly admitted, was that certain classes of subordinate tenants, and chiefly those denominated dependent talookdars, or khodkast or chupperbund ryots, possessed certain rights and immunities which it was just and expedient to uphold.

Revenue Selections, Vol. I, page 378.

VI.—MR. JAMES MILL (*2nd August 1831*).

The great peculiarity, as it appears to me, in the state of the land in India, arises from the situation of the great mass of cultivators, who hold the land generally in small portions, in a way different from what is known in Europe, and to a considerable degree different from what obtains in other parts of Asia. The peculiarity consists in the mass of subordinate cultivators being landholders, having a right to the perpetual hereditary occupancy of the soil so long as they continue to pay the revenue demanded by Government, the demand of Government being unlimited, although practice, long continued, was understood in a certain vague way to fix a limit. The land of India, originally I imagine (generally speaking), was distributed in this way among a class of men who cultivated the land with their own hands and with their own means, having the right of perpetual occupancy, and subject to the demand of Government, which in general was limited according to established practice, but according to the declared right of the sovereign was unlimited, and, according to all I can gather from the practice of former governments, never was less than the full rent, probably in many instances more, not unfrequently as much more as could be raised with-

Select Committee, 1831-32, Third Report Q. 3114, 13232. Khoodkasht Ryots.

IX. out diminishing the number of inhabitants and desolating the country.

— Sir John Shore's information was different. In his Minute of June 1789 he observed: "The policy of the Mogul administration assumed the right of taxing improvement in proportion to its advance; but it is, I conceive, proved that, from the time of Akbar to that of Farockseer, they exercised it with moderation." Moreover, Mr. Mill admitted that the khoodkasht ryots, who, he supposed, paid more than the rent, did, generally, sub-let their lands to others who paid less than the khoodkasht rates—that is, less than the rent. The inconsistency should have made him reconsider his opinion, that the Government exaction was of the full rent: where it was so nominally, the pressure was lightened by cultivation of land in excess of that for which the ryot paid rent:—

Q. 3285.—Would it have been allowed under that system, where the ryot has none of the rent, and in cases where the ryot was in communication with the Government without the intervention of a middle-man, that the ryot should lease his right of cultivation to any one beneath him? Yes, that is frequently done, and that constitutes the distinction between khoodkasht and the pykasht ryots; such a ryot had undoubtedly the power of employing other ryots, who had no right to the land, under him, on any terms he thought proper.

Q. 3268.—When he had placed his land in this situation, was not he to all intents and purposes in the situation of the proprietor of the soil, paying a tax to Government? Only that he had a very limited interest.

Q. 3287¹.—Did not he receive a rent? It was very rarely that he received a rent; those people were commonly his servants or labourers, and when he assigned a particular portion to them (it was a sort of tenure that existed in Europe formerly), he had in general to advance the capital with which those people cultivated.

Q. 3288.—The question did not go to the practical operation of the system, but to the theory of it? I think it is rather a question about the meaning of a term, whether you would call this holding of the ryot an absolute property in the land. I think, according to the usual meaning of the word in England, where the ownership of the rent is in reality the beneficial interest of the owner of the land, you can hardly call the ryot, in the same sense, the owner of the land, seeing he is not the owner of the rent at all; and there is a peculiarity worthy of remark in the cases in which the casual and perpetual occupants hold under the Government, that the perpetual occupant pays the larger rent of the two, his lands are more highly assessed.²

Khoodkasht
ryots paid higher
rent than py-
kasht.

¹ Here Mr. Mill maintained that the khoodkasht ryot, who pays rent for all the land he holds, including the portion cultivated for him by the pykasht ryot, obtains from the latter, for that portion, less rent than he pays for it to the Government. The inconsistency can only be accounted for by his knowledge that the khoodkasht ryot held more land than had been assessed by Government, or consequently was assessable by the zemindar.

² This was the general practice even when the pykasht held from the village proprietors.

Q. 5514.—The khoodkasht ryots I consider to have been universal in India, and the land to have been held by them with few exceptions. I also concur that the principal officers in the villages were hereditary in certain families, to whom belong advantages similar to those now claimed by the meerassadars at Madras, that is, certain dues and privileges beyond the perpetual occupancy.

APP. IX.

KHOODKASHT
RYOTS.

Para. 3, contd.

VII.—MR. HOLT MACKENZIE (18th April 1832).

(1). The persons whom I should call proprietors may be generally described as cultivators possessing a fixed hereditary right of occupancy in the fields cultivated by them, or at their risk and charge; their tenure being independent of any known contract, originating probably in the mere act of settlement and tillage, and the engagements between them and the zemindar, or (in the absence of a middle-man) the Government officer, serving, when any formal engagements are interchanged, not to create the holding, but to define the amount to be paid on account of it. They cannot justly be ousted so long as they pay the amount or value demandable from them: that is determined according to local usage, sometimes by fixed money rates varying with the quality of the land or the nature of the crop grown; sometimes by the actual delivery of a fixed share of the grain produce; sometimes by an estimate and valuation of the same; sometimes by other rules; and what they so pay is in all cases distinctly regarded as the Government revenue or rent, whether assigned to an individual or not, in none depending on the mere will or pleasure of another. There are varieties of right and obligation which one could fully explain only by a reference to individual cases; but this is my general conviction of the rights of the class whom I should consider the proprietors of the fields they occupy. In Bengal Proper they are usually called khoodkasht ryots (*i. e.*, ryots cultivating their own), and by this class of persons I believe the greatest part of the lands in that province is occupied.

Sess. 1831-32,
Vol. XI, Q. 2575.Khloodkasht
ryot held with-
out pottahs.

(2). The most general tenure in the Lower Provinces is that of cultivators possessing a fixed right of occupancy (I use the word occupancy to designate the tenure by him, by whom, or at whose risk and charge, land is tilled, and its fruits gathered) independently of any known contract, but limited to specific fields, who cannot be justly ousted so long as they pay the amount or value justly demandable from them, on fixed principles, as Government revenue, and in no case depending on the mere pleasure and will of another individual. The tenure appears to be generally recognized as hereditary and divisible among heirs, though commonly forfeited by relinquishment of possession, not compulsive, and the non-payment of revenue. To this class I consider the khoodkasht ryots of Bengal to belong, having no doubt that they are the proprietors of the fields they occupy though, as I shall explain below, doubtful of the extent of their rights in the uncultivated land attached to their villages.

Ibid., page 305.

VIII.—MR. T. FORTE CUE, *formerly Civil Commissioner of Delhi, and before that employed in Bengal* (29th February 1832).

(1). Opportunities of no inconsiderable local experience, directed with much solicitude to this topic, have satisfied my mind that the ryots are

Sess. 1831-32,
Vol. XI, page
269, para. 12.

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КНООДК'СИТ
Р'ЮТЪ.

Para. 3, contd.

not without their rights. I do not find that the ryots have perfect or absolute rights, without which many would consider that they have practically none; but I maintain that they possess certain qualified rights, or interests, if they should be rather so termed.

(2). Such qualified rights or interests are those of occupation and regulated share of the produce, according to local custom, which from very remote time determines what is the ryot's and what the zemindar's, or Government's, or jageerdar's fee, &c., for it matters not which of these receive; they are, as to the ryot, one and the same.

Ibid., para. 14.

(3). The various elements, and the practice too, for adjusting these qualified rights, exist; and though continually disregarded and violated, from there being no power in the present system of things to uphold and confirm them, they still erect a tangible, respected, and clear interest to the ryots on very many occasions. * * *

Ibid., para. 18.

(4). I will only add on this head, by way of summing up, that the grants of the ancient governments recognize qualified rights in the ryot; and that the fact of their having maintained them is established. Further, that neither the permanent settlement, nor any subsequent regulation, has cancelled those rights.

IX.—REVENUE LETTER FROM BENGAL (CEDED AND CONQUERED PROVINCES) (7th October 1815).

Sess. 1831-32,
Vol. XI, App. 10,
page 91.

(1). Although we have but too strong grounds to believe that the ryots are frequently subjected to exactions by the zemindars and others, and although we unreservedly admit that the existing institutions of the country are very imperfectly calculated to afford to them, in practice, that protection to which, on every ground, they are so fully entitled, yet their rights, considering the question abstractly, do not appear to us by any means enveloped in that obscurity which might be supposed, from the elaborate discussions which the subject has occasionally undergone.

(2). We consider it as a principle equally applicable to all the provinces immediately dependent on this Presidency, and, we believe, we might safely add, to the whole of India, that the resident ryots have an established permanent hereditary right in the soil which they cultivate, so long as they continue to pay the rent justly demandable from them with punctuality. We consider it equally a principle interwoven with the constitution of the different governments of India, i. e., of the country itself, that the quantum of rent is not to be determined by the arbitrary will of the zemindar, but that it is to be regulated by specific engagements between the parties or their ancestors, or, in the absence of such engagements, by the established rates of the pergunnahs or other local divisions.

X.—MR. WELBY JACKSON (21st November 1849).

(a). It is erroneous (though a common error) to speak of the relative rights of the zemindars and ryots of Bengal as those of landlord and tenant. These terms being inseparably connected with the ideas assigned to them in England, originating in the feudal system, their use is calculated to mislead. Nothing can be more different from the zemindar,

who, in fact, only contracts to collect the government land tax, and to pay it into the treasury, reserving his own share, than the feudal lord, who held his lands liable only to certain military services. Nothing can differ more from the tenant in England, whose right originates in an assignment from the feudal lord, either for a time specified, or from year to year, than the ryot of Bengal, whose family has resided in one spot, in one village, from time out of mind, whose right of occupancy was established when the zemindars were actually mere collectors on the part of government, receiving a percentage on their collections and liable to removal at pleasure.

(b). There are but two parties having a right in the soil in India—the State and the cultivator. Each has a fixed share in the produce. Under the terms of the permanent settlement, the zemindar has an assignment of the government share, and summary right of distraint is vested in him to realize punctually that share from the cultivator. He cannot, however, raise the rent on a cultivator, without going through a prescribed form of notice under Regulation V, 1812, and without bringing a regular suit to establish his right to raise the rent.

(c). The rights of the resident cultivators are generally reserved by express condition in the Regulations of 1793, and others, under a variety of terms—khoodkasht, chupperbund, mookuddum, &c., &c.; and it is left open to the courts to decide upon any other claim to hold upon fixed rents, or upon rents ascertainable by fixed rules.

(d). Generally, the ryots have a prescriptive right of occupancy. The exception is when a ryot living in one village cultivates a portion of another. These are called paheekasht, and have not the same rights as the resident cultivators. It is the resident cultivators who have brought the country into cultivation. It is to them that the improvement and extension of the tillage is to be ascribed.

XI.—MR. WELBY JACKSON (*27th August 1852*).

The tenants are chiefly comprised under two denominations—khoodkasht or chupperbund, or resident ryots, cultivating land in the villages in which they reside, and paheekasht, or ryots cultivating in villages where they do not reside. The terms used to express these tenures in different parts of the country are different, but in effect the distinction is resident or non-resident ryots.

The resident ryots hold by prescription, and cannot legally be turned out as long as they pay the rent; their right has arisen by prescription and long hereditary occupation, and their right to occupy is acknowledged in the Regulation of 1793, which effected the settlement of the country: they have no leases or papers, indeed, they will not accept leases from the zemindars, their rights being anterior and independent of the zemindars.

Paheekasht or non-resident ryots can have no right to occupy except by lease, written documents, or agreement; with these the zemindar has full power, except in so far as he has bound himself. The engagements of a former zemindar, even, do not bind the present zemindar,

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RYOTS.

Para. 3, contd.

APP. IX. if the latter has purchased at a revenue sale, which voids all engagements of the former zemindars. These non-resident ryots can give no trouble to the zemindar; they may be called in to show their leases, and, if they have none, they may be evicted.

КНООДКАШТ
RYOTS.

Para. 3, contd.

But with the resident ryots the case is different; their title, though the best, most just, and most unquestionable in the country, has arisen from occupancy and prescription; and these are points which are not so easily proved in a court of justice. If they have any documents admitting their rights, they must be of date previous to the decennial settlement, to be of any use, and thus scarcely legible; and if oral evidence be offered, it is often rejected, because no oral evidence can reach back more than fifty or sixty years to the decennial settlement; and occupancy or residence since that date is not considered a proof of right. In the settlement of the Western Provinces, hereditary occupancy for two generations is admitted by the Government officers to give a claim to hold as a resident cultivator; but there is no such limit in Bengal; and in fact it is very difficult for a resident ryot in Bengal to establish his right in court under the present practice.

The resident ryots form the most valuable and by far the largest portion of the peasantry; but as their rights are independent of the zemindar's, and they have a weight and influence owing to their very respectability, the zemindars prefer the non-residents, whom they may treat as they please, and subject to a racked rent, without fear of opposition. * * If anything is likely to produce a popular disturbance, it is giving the zemindars the summary power to eject the old resident cultivators, the yeomen of the country, though the people of Bengal will bear almost anything.

Besides the peasantry above mentioned, there are *mocurureedars*, holders under written documents of various descriptions, at fixed rents, at rents ascertainable by certain fixed rules, with limited and limitable rights, some with rent payable in kind, some in money, the amount to be fixed at the value of the half share of the produce, and this to be fixed by a special rule.

XII.—TAGORE LAW LECTURES (1874-75).

Page 12.

There were three classes of cultivators having an interest in the soil—*1st*, the original settlers and their descendants; *2nd*, the immigrants who had permanently settled in the village; *3rd*, the mere sojourners in the village, or those who, without living in the village, cultivated land of the village. I shall proceed to consider the position of these classes more fully.

(a). The original settlers in the village, with their descendants, and those cultivators who had been admitted to share the same privileges, formed the class of *khloodkasht* (own cultivating) ryots, and they had an hereditary right to cultivate the lands of the village in which they resided. They were also called *chupperbund* (house-tied), *mooroossee* (hereditary), and *thani* (stationary). Their rights were regulated by custom, probably the custom of many centuries, and having at least as much

force as any written law. These customs were no doubt in some cases violated by the hand of power; but that is only what happened with all rights, whether depending upon express and written law, or upon the unwritten law of custom; and these violations were doubtless more frequent in Mahomedan times. But it is to these customs we must look to ascertain the rights of almost all the parties having interests in the land.

APP. IX.

Кhoodkasht
рыоты.

Para. 4.

(b). The khoodkasht class of ryots appears to have been the same as the class of *meerassadars* in Southern India (called also *ulcudies* in Tanjore), who existed in very early times, and were anciently called *caniatchy* ryots in Malabar. Page 13.

(c). They could not be ousted while they continued to cultivate their holdings and pay the customary revenue; but, on the other hand, they could not originally transfer their holdings without the consent of the community. Page 17.

* * We may therefore conclude that these cultivators held a permanent hereditary, and although originally an unalienable, yet probably subsequently a transferable, interest in the land.

(d). They paid the customary rate, which could not be raised; and in some parts, when the assessment was once fixed, custom prohibited a measurement of the land with a view to surcharging the khoodkashts.

* * * * *

(e). From the description I have given of the position of this class of ryots, I think it clearly appears that they had proprietary rights of a very complete kind; but they do not seem to have been of that unlimited kind which we understand by a fee simple.

4.—PYKASHT RYOTS.

I.—LAW LECTURES.

The next class of ryots very nearly approach the position of the khoodkashts, and are sometimes ranked with them. There are, however, some differences which mark the distinction between the original settlers and those afterwards admitted to form part of the permanent village community. Page 19.

(a). (1). The cultivators of this class are generally included in the class called *pykasht* (cultivating in another village than their own); but sometimes the term *pykasht* is restricted to those strictly so, the mere sojourners in the village, or those who, living in another village, cultivate land in the village with respect to which they are reckoned *pykashts*. This second class of cultivators was also called *chupperbund* or *judeed*, names specially applied to immigrants who have permanently settled in the village to which they have emigrated.

Pykasht of nearly khoodkasht status, viz., chupperbund, or pyacarret, or ool paracoodish.

(2). Their right to a permanent interest in the soil, which nearly approaches that of the khoodkashts, depends upon their having settled as permanent inhabitants in the village, building and clearing and

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CHUPPERBUND
RYOTS.

Para. 4, contd.

establishing themselves as members of the village community, ready to undertake a share in the responsibilities attaching to that position. It does not depend on the length of time they have occupied, except that the disposition to become permanent settlers could hardly be satisfactorily proved without some length of possession. Accordingly, those who had settled in the village for more than one generation, were generally considered to have sufficiently shown their intention, and such settlers became recognized as chupperbund cultivators. They appear to have come in originally to cultivate land abandoned by the khoodkashts, to whom they paid *russooms*, or fees, and to whom they were bound to surrender their holdings when required; but they were entitled to a proper compensation for the loss of them. They were called *pyacarries* and *ool paracoodies* in the Northern Circars and the South of India generally. Uninterrupted occupation and succession gave them a prescriptive right to occupy; but there is no instance of sale of their holdings; they were, in fact, conditional occupants, and had not so complete a right as khoodkashts.

(3). They could be dispossessed for default in payment of the assessment, or for not keeping up the full extent of cultivation; but they could not reclaim their holdings, as the khoodkashts could. They had no share in the management of the village or in the privilege of the khoodkashts. The right of the *pyacarries* in the Northern Circars is said to be a sort of life-estate; but the right of this class appears to have grown to an hereditary, though inalienable, right to occupy, paying the fixed assessment.

(4). That assessment was slightly lower in former times than that of the khoodkashts, but higher than that of the mere pykashts. They received 45 per cent. of the crops as their share, instead of 50 per cent., which was the proportion the ordinary pykashts received. Out of their share they had to pay fees to the khoodkashts.

(5). It is clear that this class of cultivators had a less complete proprietary right than the first class, or khoodkashts, but still they had a permanent hereditary proprietary right. This, however, was inalienable, and was otherwise subject to limitations and burdens from which the khoodkashts were exempt, and did not so completely incorporate them with the khoodkashts as to entitle them to the same position in the village.

Pykasht Ryots.
Page 22.

(6). The third class is that of the strict pykashts, who came from another village, usually a neighbouring one, to cultivate the lands of the village which the khoodkashts were unable to cultivate. They were called *pyacarries*, common *paracoodies*, and *oopudies* in different parts of India. They were mere tenants-at-will, or more usually from year to year, but sometimes for fixed periods. They had to be attracted by favourable terms, since the competition formerly was for cultivators, and hence they got half the produce. They paid fees to the khoodkashts. They were mere sojourners in the village, or cultivated while living in neighbouring villages. This class of cultivators, although they had no proprietary right, could not be ousted between sowing and harvest. Their interest was of an uncertain and precarious description. Such rights were left to be settled by contract, and were hardly allowed to come

under the higher protection of custom, which regulated all the more important and permanent interests. APP. IX.

PYKASHT RYOTS.

Para. 5.

II.—REPORT OF MR. PLACE (*6th June 1799*).

A pyaearry accordingly means a husbandman who cultivates the land of another, either for one or more years, by agreement, but mostly for one only, as leases do not seem formerly to have been in use; and having only a contingent interest in it, as an encouragement to induce him to bring part of his labours from his own village, or as an incitement to exertion, he receives one-half of the produce, which is, generally speaking, a greater share than a meerassadar receives. If the meerassadars are capable of cultivating all their lands, a pyaearry will not be admitted, nor can he on any account, in that case, have a preference, from any competent authority, without a palpable injustice to others.

Fifth Report,
page 71^h.
Pykasht paid
less rent than
khloodkashts.

[Here follows a description of the special or superior pykasht or chupperbund tenure (approaching to that of khloodkasht), which is almost identical with the quotation in section I from the Tagore Law Lectures.]

III.—COURT OF DIRECTORS (*15th January 1819*) (*Revenue letter to Bengal*).

We do not clearly understand whether, in speaking of “resident ryots,” you do, or do not, contemplate only the khloodkasht ryots, who have a permanent hereditary interest in the soil; and whether, in advertising to “those lands upon which no resident ryots are established,” you do, or do not, intend all lands cultivated by pykahst or migratory ryots, whose tenure is temporary.

Revenue Selections, Vol. I,
page 351.
Pykashts entitled to protection equally with khloodkashts—a protection which they have not received.

Does this permanent hereditary interest in the soil constitute the only distinction between the khloodkasht and pykasht ryot? Or, if that be not the only distinction, are the payments to be made by the pykasht, equally with that of the khloodkasht, to be regulated according to the custom of the pergunnah?

Whatever may be the distinction between them as to their rights, it is clear that, in every respect, the two classes of ryots are equally entitled to the protection of Government; and we observe that you concur with us in the opinion that, however well intended for this purpose, our regulations under the permanent settlement have not been effectual to it.

5.—KHOODKASHT RYOTS PAID HIGHER RENT THAN PYKASHT.

I.—SIR J. SHORE (*June 1789*).

(1). Those who cultivate the lands of the village to which they belong (resident ryots), either from length of occupancy or other cause, have a stronger right than others, and may, in some measure, be considered

Fifth Report,
page 192.

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RYKASHT PAID
LESS RENT THAN
KHOODKASHT.

Para. 5 contd.

as hereditary tenants, and they generally pay the highest rents. The other class cultivate lands belonging to a village where they do not reside; they are considered as tenants-at-will; and, having only a temporary accidental interest in the soil which they cultivate, will not submit to the payment of so large a rent as the preceding class, and when oppressed, easily abandon the land to which they have no attachment.

Page 193.

(2). On the other hand, the (khoodkasht) ryots derive advantages even from abuses. The want of engagements, or of precision in the terms of them, affords them opportunities of imposing upon the landlords; artifice is opposed to exaction, and often with success. They cultivate lands of which there is no account, and hold them in greater quantities than they engage for; hence they are enabled to pay rents and cesses which appear extortionate; they hold lands at reduced rates by collusion; obtain grants of land fit for immediate cultivation on the reduced terms of waste land; and by management with a renter at the close of a lease, procure fictitious pottahs and accounts to be made out with a view to defraud his successor.

(3). It has been found that the ryots of a district have shown an aversion to receive pottahs, which ought to secure them against exaction, and this disinclination has been accounted for in their apprehensions, that the rates of their payments being reduced to a fixed amount, this would become a basis of future imposition; but admitting this to have its weight, the objection may be also traced to other sources, in the preceding explanations. The Collector of Rajshahye informs us "that he fears the ryots would hear of the introduction of new pottahs with an apprehension that no explanation could remove."

II.—MR. H. COLEBROOKE—*Husbandry of Bengal (1806).*

Besides the variety of tenures which we have noticed, a difference arises from other circumstances. A tenant who cultivates the lands of a distant village, cannot be placed on the same footing with one who uses land in the village wherein he resides. Indulgence in regard to his rent is allowed for the purpose of enticing the distant cultivator; and the inconvenience of remote cultivation makes it necessary that he should be at liberty to relinquish at any time the land which he uses; and, consequently, his own continuance being precarious, he cannot have a title of occupancy which shall preclude the landlord from transferring the farm to a resident husbandman desirous of undertaking it.

III.—MR. J. MILL (*4th August 1831*).

There is a peculiarity worthy of remark in the cases in which the casual and perpetual occupants hold under the Government, that the perpetual occupant pays the larger rent of the two, his lands are more highly assessed (*Q. 3288*).

IV.—MR. W. M. FLEMING (*30th March 1832*).

(1). The common practice in Behar is for each of the sharers (who are generally Brahmins or Rajpoots, and work very little) to appropriate a portion of the land (for which they pay no rent) equal to what they suppose to be the profit of their respective shares; this they cultivate on their own account; the remainder of the land is let to the more industrious and hard-working classes of resident or non-resident ryots, who pay a rent equal to at least half the produce of the land cultivated by them, and from this find the revenue and other charges are to be paid. In favourable years no difficulty is experienced, and there is sometimes a surplus to be divided amongst the sharers. * *

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PYKASHT PAID
LESS RENT THAN
KHOODKASHT.Para. 5, contd.
Third Report,
Select Committee,
1831-32.Sess. 1831-32,
Vol. XI, page
284.

(2). There are also *pykasht*, or ryots who reside in villages and take a portion of land to cultivate from year to year, and generally pay a less rent than the lower class of resident ryots (*chupperbunds*) who have certain advantages, such as the choice of the land, and paying nothing for that occupied by their houses.

V.—WARREN HASTINGS (*12th November 1776*).

There are two kinds of rients; the more valuable are those who reside in one fixed spot, where they have built themselves substantial houses, or derived them by inheritance from their fathers. These men will suffer much before they abandon their habitations, and therefore they are made to suffer much; but when once forced to quit them, they become vagrant rients. The vagrant rients, as Mr. Francis observes, have it in their power in some measure to make their own terms with the zemindars. They take land at an under-rent, hold it for one season; the zemindar then increases their rent, or exacts more from them than their agreement, and the rients either desert, or, if they continue, they hold their land at a rent lower than the established rent of the country. Thus the ancient and industrious tenants are obliged to submit to undue exactions, while the vagrant rients enjoy lands at half price, which operates as an encouragement to desertion, and to the depopulation of the country.

Francis' Revenues of Bengal,
page 154.VI.—RESOLUTION (*1st August 1822*).

The khloodkasht ryots in Cuttack would seem to have been so heavily taxed, that their tenures were without exchangeable value, and sales consequently were unknown. Their situation, indeed, is represented as having been, and as still being, inferior in comfort to that of the pykasht ryots, or contract cultivators, who claimed no permanent tenure in the lands occupied by them. In this respect Cuttack would appear to resemble the adjoining provinces of the Madras Presidency, in which it is stated that throughout the country from Nellore to Ganjam, the occupant cultivators, though enjoying the right of holding their lands from generation to generation, subject to the payment of the public dues, derived from it no rent, and have never been known to dispose of their tenures by sale. Such, indeed, would appear to have been generally the case of the khloodkasht ryots of Bengal. But, as

(Revenue Selections, Vol. III,
page 337).

APP. IX. will hereafter be more particularly observed, there would appear to have existed in Cuttack no one to contest the right of the resident ryots to be regarded as the proprietors of the land they tilled (*paras. 136 to 138*).

RYKASHT PAID
LESS RENT AND
WAS DETRIMENT OFF
THAN KHOOD-
KASHT.

Para. 5, contd. VII.—TAGORE LAW LECTURES (1874-75).

Page 17.

The khloodkashts paid a higher rate of revenue than other cultivators in former times; but from the changed state of these things under British rule, this is reversed. There is now some competition by the cultivators for land, and not, as formerly, merely a competition for cultivators. I shall have occasion to refer to this very significant fact again, when I come to discuss the nature of the proprietary rights of the holders of the various interests in the land. The khloodkashts, then, in consequence of the change referred to, came in later times to pay lower rates than the other cultivators, but in the Hindu period they paid higher rates.

VIII.—See also *para. 4, sections I and II.*

6.—PERGUNNAH RATES.

I.—AYEEN AKBERY.

(a). Let the amelguzar see that his demands do not exceed his agreements. If in the same place some want to engage by measurement, and others desire to pay their proportion of the revenues from an estimate of the crops, such contrary proposals shall not be accepted. As soon as the agreements are concluded and executed, let them be sent to the presence. Let him not be covetous of receiving money only, but likewise take grain. The manner of receiving grain is after four ways:—

Vol. I, Part III,
page 327, Edi-
tion 1800.

1st, *kunkoot*.—*Kun*, in the Hindovee language, signifies grain; and the meaning of *koot* is conjecture or estimate. The way is this—the land is measured with the crops standing, and which are estimated by inspection. Those who are conversant in the business say that the calculation can be made with the greatest exactness. If any doubt arise, they weigh the produce of a given quantity of land, consisting of equal proportions of good, middling, and bad, and form a comparative estimate therefrom. * * Let him not entrust the principal men of the village with making the estimates of *kunkoot*, for such a measure, by giving room for oppression, would create disgust, and consequently occasion indolence and neglect. But, on the contrary, let him transact his business with each husbandman separately, and see that the revenues are demanded and received with affability and complacency.

2nd, *buttiey*, and which is also called *bhaweley*, is after the following manner:—They reap the harvest, and, collecting the grain into barns, then divide it according to agreement. But both these methods are liable to imposition if the crops are not carefully watched.

3rd, *kheytt buttiety*, when they divide the field as soon as it is sown.

4th, *lang buttiety*—they form the grain into heaps, of which they make a division. Whenever it will not be oppressive to the subject, let the value of the grain be taken in ready money at the market price.

(b). The husbandman may always pay his revenue in money or in kind, as he may find most convenient. * * The husbandman has his choice to pay the revenue either in ready money, or by *kunkoot*, or by *bhawceley*.

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PENGUNNAH
RATES.Para. 6, contd.
Ibid., page 314.

II.—BOARD OF COMMISSIONERS, CEDED AND CONQUERED PROVINCES (5th January 1819).

(a). From these reports of the collectors it will appear that for the more valuable articles of culture in all the districts, and for every sort of produce in some districts, money rents obtain universally; and that the tenures in kind, under the several demonstrations of *ulmlee bhowlee*, and *bhrettye*, prevail only for the inferior sorts of grain, and in those districts, or in those particular pergunnahs, where, from the nature of the soil, the want of means for artificial irrigation, and the consequent dependence on the uncertainty of seasons, the tenants are not disposed to subject themselves to a certain payment.

Revenue
Selections,
Vol. III,
page 170.

(b). In tenures of this description, the proportion of the crop, whether taken by the landholders in kind, or commuted for its value in money, is regulated by custom, which varies, according to the nature of the soil, from one-fourth and less in lands newly reclaimed, to one-half in lands under full cultivation; and the commutation in money is similarly governed by fixed custom, conformably to which the tenant purchases the landholder's share at a certain rate above the market price, after the produce of the field has been estimated by a regular appraisement on survey.

The Resolution of Government dated 1st August 1822 corrected the erroneous impression conveyed in this extract, that the *buttai* system prevailed extensively; see *post*, III b and c.

III.—TAGORE LAW LECTURES (1874-75).

(a). (1). The great object of Toodur Mull's settlement appears to have been to substitute a fixed money rate for the beegah, instead of the various rates which had prevailed under the complicated system of Hindu times. And accordingly, either at the original settlement, or very shortly afterwards, the revenue was fixed at a certain sum for the beegah, whatever might be the crop actually grown. This was called the *jumma-bundy neckdy*, or money settlement. The assessment was arrived at, as before described, by an average then made of the several kinds of crop which the land was capable of producing during ten years, and one-fourth of the gross produce was the rebba or State share.

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(2). But although one of the main features of the settlement was the change in the mode of rendering the revenue, this mode was not obligatory, and the old methods might still be continued at the option of the

Page 72.

APP. IX. cultivator. The cultivator might choose to pay either in kind or in money, but he was bound to make his choice of the two methods, and to adhere to one of them.

—
PUNGUNNAH
RATLS.

Para. 6, contd.

Page 73.

(3). The two methods of ascertaining the Government share when paid in kind, viz., *kunkool*, or grain estimate, and *bhawley* or *bhaolee*, called also *butliej* or *buttai* (division), have continued in use, with various modifications, up to the present time. But the actual division of the crops had, even at this period, begun in some parts to fall into disuse, the cultivators having probably come to agree with the State in regarding this mode of assessment as burdensome to the revenue-payer. And where the *buttai* system still prevailed, and the cultivators did not feel disposed to accept the new system, Toodnr Mull endeavoured to supersede the necessity for an actual division and sale by prescribing that the value of the Government share of grain might be taken in money at the market price of the day, whenever it would not be oppressive to the ryots to do so.

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(4). The *buttai* system continued in use in many parts of the country in spite of the advantages supposed to be offered by the other system: and a settlement under this system was known in the south of India in later times as an *aumance* settlement; but it was chiefly in Bengal that it retained its hold; and it seems that the new settlement was less completely applied there, at least for a time, than in some other parts.

The information respecting the extensive prevalence of the *buttai* system in Bengal is incorrect; the testimony of high authorities, like the Select Committee of 1812 (the Fifth Report), Sir John Shore, and Mr. Holt Mackenzie, is to the contrary effect.

(b).—GOVERNMENT RESOLUTION (1st August 1822).

But though the Board for the Ceded and Conquered Provinces consider the principle of actual division of the produce to be indisputable, his Lordship in Council is not aware on what evidence they have admitted the allegation. In Bengal, from the most ancient times of which we have any clear accounts, the system of money rates would appear to have prevailed; and in none of the provinces would the system of division seem to have been universal. To what period the Board design to refer by the terms 'ancient times' and the 'later periods of the Mahomedan power,' does not appear; but his Lordship in Council apprehends that the endeavour to go back to times when any general or systematic rule of division existed, would lead us far beyond the limits with reference to which the existing rights of the people will have to be settled.

(c).—See also post, section VIII, b and c.

IV.—BAILLIE'S LAND TAX IN INDIA.

Page 44411.

(1). It is worthy of remark that the Hindu-tax, being a share of the produce, was in reality a *mookassimah*, and may therefore be confounded with one kind of the *khiraj*. The account in the Ayeen Akbery further states that Shere Khan and Selim Khan were the first who abolished the custom of dividing the crops. Down to this period, then, it seems that

the tax was *mookassimah*; but it is probable that it was the *mookassimah* of the Hindu, and not that of the Mahomedan Law, which, as already observed, was not applicable to infidels to the Moslim faith. The movement of Shere Khan and Selim Khan was probably the first step taken by any Mahomedan sovereign of India for the imposition of the true *khiraj* upon the land of that country. The system afterwards adopted by Akbar was only that of Shere Khan carried into effect with greater precision and correctness. * *

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PURGUNNAI
RATES.

Para. 6, contd.

(2). In the interval between Akbar and Aurungzebe, some change must have taken place in regard to a part of the land, inasmuch as it had become *mookassimah*, on which rent is "due out of actual produce only;"—for under Akbar's settlement it was all *wuzeebah*. Many writers have noticed the preference given by the cultivators of India to the *mookassimah* or *buttai* method of taking the *khiraj*, as it is now called. The reasons assigned for this preference are the facilities which it affords for keeping back a portion of the crops. * * A *wuzeebah* (on which rent is due on the extent of land occupied, with reference to the capability of the soil, whether there be any produce or not) may be lawfully changed to a *mookassimah* with the consent of the people. This is recognized in Aurungzebe's firman. The transition, too, from Akbar's *wuzeebah* to a *mookassimah* was very easy. The peasant, who had the option of paying in money or in kind, would naturally pay in kind when his crops were abundant, and prices generally were below the Government average; but when the crops were scanty, he would, as a matter of course, reject the average on the ground of inability. When the Government officer collects direct from the cultivator, it will be found very difficult to hold him to the average, except when it happens to be for his advantage.

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(3). A period of great anarchy followed after the death of Aurungzebe, and continued more or less to our own times. During this interval considerable changes seem to have taken place in the state of the *khiraj*. A great deal of the land fell back from *wuzeebah* to *mookassimah*, or became the property of the State, and either sunk into *moojarant*, or was granted to private individuals exempt from *khiraj*, &c.

Page XXXVII.

V.—BOARD OF REVENUE ON DEPUTATION (25th May 1831).

(1). The revenue administration of Native rulers, we believe, has never recognized—nor does it now, where that form of government still exists—a right in cultivators to occupy land at fixed money rates, though we are inclined to think that the permanent cultivating tenures have always been admitted and maintained by Native governments, subject to the contribution of a known proportion of the produce in kind, regulated according to local usage, either by qualities of soil, or description of crops, and commutable, at the pleasure of the parties interested, in money payment.

(2). We are satisfied a single instance would not be found, from the western extremity of Saharnpore to the eastern boundary of the Goruckpore district, including the dominions of the King, and not omitting the reserved *Dehi* territory, of a zemindar, *daree*, *mokurraree*, or of any other description of estate held by a

APP. IX.

PERGUNNAH
RATES.

Para. 6, contd.

in which the rent payers, of whatever name or character, claim a right to hold land at fixed money rates in perpetuity, or rates limited in the aggregate for a village, and fixed in detail on the *bach-h-burur* principle. The rule of *buttye* is, we believe, the only rule of limitation known; and that ought, of course, in every case to be ascertained and recorded. If that rule of division, instead of undefined and unknown pergunnah rates, had been assumed as the limit to the demand of zemindars in the permanently-settled provinces, on ryots who had rights of occupancy in particular lands, the injury to individuals would, perhaps, never have been heard of which has partially resulted from that great and beneficent measure, the permanent settlement.

VI.—MR. FORTESCUE, CIVIL COMMISSIONER, DELHI (28th April 1820).

Revenue Selections, Vol. III, page 414, para. 20.
Revenue Selections, Vol. III, page 415.

(1). Previously to the British rule, *nukdee* or ready money settlements were scarcely known anywhere; *buttee* (or division of the crops) was the plan of regulating the receipts from the zemindars;¹ and this method they infinitely prefer to money settlement for two reasons—that they can plunder most in this way, and that they are secure against extreme distress.

(2). In forming the assessment of this territory, a primary difficulty has been, and continues to be, obviated by measurements. The subsequent details do not differ from those in other parts of the country, and they are too well known to need notice here. In pergunnahs where order and any system of revenue or government has prevailed, the former pergunnah rates have continued; yet these are always subject to variation. As a common mode of gross calculation, they are applicable, but they are lowered or raised perpetually according to circumstances.²

(3). The prevalent impression is that these rates are ordinarily too high, because under our system of applying them, more of the produce is rated or brought to account than when those rates were promulgated and practised.

(4). The conviction for many years on my mind, from inquiry and practice, is that neither the usual pergunnah rates, nor the nominal one-half produce (borrowed, too, from the Native government) is tenable.

(5). No such minute and exact scrutiny took place formerly as at present. The revenue of our time always exceeds that of the late government, and amongst the sharers³ of those territorial assets which did not formerly reach the public treasury, the zemindar was a principal one. He would still be happy, and ask nothing further than one-half of his produce by *buttae*, according to the former system, yet the result would soon establish to our government that we did not acquire the other half. * *

(6). Whether in measurement or in estimates, we must always throw in something in favour of the ryot (zemindar), giving a step or two in each beegah, or five or ten maunds in each hundred.

¹ Cultivating zemindars or ryots.

² According to this account, the pergunnah rates were fixed rates as regards proportion of produce demandable as rent, but were of variable amounts, according as the market price for valuing the fixed proportion of produce varied.

³ *Sic.*

(7). The pergunnah rates when they have existed, or those which are assumed, must necessarily press hard or be easy upon the zemindar according to the price of grain in the market. He is, however, seldom or never a capitalist, and although the hunnea, or dealer, may profit by storing, delaying, and marketing, the proprietor is scarcely ever but a loser from the fluctuations of price. Although he may occasionally gain, yet his profit is never found to be a counterpoise in any degree to his sufferings when he loses.

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RATES.

Para. 6, contd.

VII.—MR. H. COLLEBROOKE (1812).

But if it be thought expedient, in place of abrogating the laws which were enacted for the protection of the tenantry, and especially of the khoodkasht ryot, or resident cultivator, that the right of occupancy, which those laws were intended to uphold, should be still maintained, and that the ryot should be supported in his ancient and undoubted privilege of retaining the ground occupied by him, so long as he pays the rent justly demandable for it, measures should be adopted, late as it now is, to reduce to writing a clear declaration and distinct record of the usages and rates according to which the ryots of each pergunnah or district will be entitled to demand the renewal of their pottahs upon any occasion of a general or partial cancelling of leases.

Revenue Selec-
tions, Vol. I,
page 263.

VIII.—SIR J. SHORE (June 1789 and September 1789).

(a). Tury Mull is supposed to have formed his settlement of Bengal, called the *Tumur Jumma*, by collecting, through the medium of the canoongoes and other inferior officers, the amounts of the rents paid by the ryots, which served as the basis of it. The constituent parts of the assessment were called *tukseem*, and comprehended not only the quota of the greater territorial divisions, but of the villages, and, as it is generally believed, of the individual ryots. The *Tumur Jumma* is quoted as the standard assessment.

Fifth Report,
page 170,
para. 11.

(b). In general, throughout Bengal, the rents are paid by the ryots in money, but in some places the produce is divided, in different proportions, between the cultivator and zemindar. This custom chiefly respects lands under the denomination of *khumar*.

Ibid., para. 22.

(c). The custom of dividing the produce of the land in certain proportions between the cultivator and the Government, or the collector who stands in its place, is general, but not universal, throughout Behar. In Bengal the custom is very partial and limited.

(d). In every district throughout Bengal, where the license of exaction has not superseded all rule, the rents of land are regulated by known rates called *nirk*, and in some districts each village has its own; these rates are formed, with respect to the produce of the land, at so much per beegah. Some soil produces two crops in a year of different species, some three. The more profitable articles, such as the mulberry plant, betel-leaf, tobacco, sugarcane, and others, render the value of the land proportionably great.

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PERGUNNAH
RATES.

Para. 6, contd.

(e). When the five years' settlement was concluded by the Committee of Circuit, several conditions were inserted in the agreements of the farmers and zemindars, calculated for the security of the Government, and the benefit of their tenants. * * They were directed to collect from the cultivated lands of the ryots in the mofussil the original jumma of the last and foregoing year, and abwat established in the present, and on no account to demand more. Where the lands were cultivated without pottahs by the ryots, they were to collect according to the rates of the pergunnah.

(f). IN SIR J. SHORE'S DRAFT OF REGULATIONS, EVENTUALLY PASSED AS
REGULATIONS FOR THE DECENNIAL SETTLEMENT.

In every mofussil cutcherry, the *nirkbundy*, or rates of land, shall be publicly recorded; and the zemindar is answerable for enforcing this regulation, under a penalty of fine for neglect, at the discretion of government.

This last extract (f) was omitted from the Decennial Regulations as finally passed; but that which Sir John Shore thus proposed should be enacted as law, did, however, in practice, guide the zemindars, so long as there was a competition for ryots. Intending cultivators used to refer to the recorded pergunnah rate before taking up land, for which they paid at that rate, unless they obtained a lower rate by special agreement.—See *Appendix X, para. 8, Section VIIb*.

IX.—MR. STUART (18th December 1820).

Revenue Selections, Vol. III,
page 221.

I believe that those most conversant with the subject consider the pergunnah rates as the maximum of the ryot's payments; that in ordinary seasons they can pay according to that standard, but must be allowed a remission in unfavourable harvests. Any estimate of the public revenue, therefore, formed upon these rates, should be corrected by accounts of the actual payments of the ryots for a series of years; and when this information can be obtained, there can be little danger of over-assessment.

X.—COLLECTOR OF CAWNPORE (1st January 1816).

Ibid., page 180,
para. 20.

Money tenures being for the most part prevalent in this district, the rents are governed by mutual agreement of the parties, founded upon known and established pergunnah rates, with respect to all denominations of land.

XI.—MR. J. MILL (*4th August 1831*).

APP. IX.

It seems to be at last agreed that there are no means in Bengal of ascertaining with any accuracy what are called the *pergunnah* rates, that is, certain payments which custom had established, and which were looked to, both by the Government and by the ryots, as a species of standard; not that the standard was of much advantage to the ryots, for though it was always appealed to, the zemindars and other collectors exercised the privilege of adding cesses (*abwabs*) over and above what was considered the standard cesses, which were arbitrary, and in general went to such an amount as to leave the ryot just enough to carry on his cultivation (*Q. 3202*).

PERGUNNAH
RATES.
Para. 7.

Third Report,
Select Com-
mittee, 1831-32.

XII.—TAGORE LAW LECTURES (*1874-75*).

(1.) The zemindar was, however, to some extent controlled in his assessment by custom, which required that the rates usually paid by the village should be adhered to, at least in form. Those rates were well known, and registers of them were kept by the putwaries and canoon-goes in records called village and *pergunnah reybundeeds*. Nevertheless, the zemindar ultimately contrived to extract the main portion of his profit from the surplus of his receipts beyond the jumma he paid. And in this he was still further assisted when he settled with Government for a term of years, and when, consequently, his yearly settlements with the ryots could not at all be expected to be at the same rates as he paid to government. The rates were settled with the cultivators through the headman of the village in many cases; but there appear to have been cultivators who did not form part of any village organization, and with these, probably, the zemindar could deal untrammelled, at least by the village *reybundeeds*. * *

Page 112.

(2.) The ryots' payments were, however, regulated ostensibly by the customary rates, which were known and registered in the putwary's records, and which were called the *nirk* (or *nirik*). These rates sometimes extended to the whole *pergunnah*, and sometimes only to the village. The records of these rates were known as the village and *pergunnah reybundeeds*. If such rates did not exist for any particular village, a reference was made to the rates of the neighbourhood. These rates corresponded to, and were originally derived from, the assul jumma, and in like manner, as in the case of the assul jumma, *abwabs* and cesses were assessed beyond those rates, and from time to time consolidated with them.

Page 171.

7.—GENERAL OBSERVATIONS ON RYOTS' RIGHTS.

I.—PATTON'S ASIATIC MONARCHIES.

(a). In this way I account for the two-fold existence of landed property in Hindustan, which I have distinguished by the term *absolute property*, entitling to the rent and existing in the sovereign, who may

Page 75.

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GENERAL
OBSERVATIONS.

Para. 7, contd.

Pages 344-45.

transfer or assign it,¹ and *possessory property*, liable for the rent and existing in the husbandman, ryot, or occupant, under the obligation of cultivating it, so as to produce rent or revenue to the State or its substitute, which being continuously hereditary, and also transferable, is to all intents and purposes property, but always subservient to, and dependent upon, the person who is *absolute* proprietor of the same subject.

(b). The firman of Aurungzebe, A. D. 1668, recognizes the right of the proprietor in mowezzeff to give his own ground in farm, to lend it to another, to mortgage or sell it (articles twelfth and thirteenth).

II.—SIR J. SHORE (*June 1789*).

Fifth Report.

(a). It is however generally understood that the ryots by long occupancy acquire a right of possession in the soil, and are not subject to be removed; but this right does not authorise them to sell or mortgage it, and it is so far distinct from a right of property. * * Pottahs to the *khood-kasht* ryots, or those who cultivate the land of the village where they reside, are generally given without any limitation of period, and express that they are to hold the lands, paying the rents from year to year. Hence the right of occupancy originates; and it is equally understood as a prescriptive law, that the ryots who hold by this tenure cannot relinquish any part of the lands in their possession, or change the species of cultivation without a forfeiture of the right of occupancy, which is rarely insisted upon, and the zemindars exact the difference. I understand also that this right of occupancy is admitted to extend even to the heirs of those who enjoy it.

(b). Pykasht ryots, or those who cultivate the lands of villages where they do not reside, hold their lands upon a more indefinite tenure. The pottahs to them are generally granted with a limitation in point of time; where they deem the terms unfavourable, they repair to some other spot (*paras. 406 and 407*).

(c). In some parts of the country, I understand, the zemindars are precluded from measuring the lands of the ryots, whilst they pay the rents according to the pottah and jumabundy (*para. 408*).

III.—WILKS' MYSORE.

Page 193.

At a very early period of the Company's government in Bengal, Mr. Verelst, when charged with the collections of the province of Chittagong, looking at the condition of the people with that sound, plain, common sense which distinguished his character, and not through the medium of Mahomedan institutions, confirmed the rights which he found the people actually to possess, of transmitting and alienating their landed property by inheritance, mortgage, sale, or gift. The recognition of that right (in the words of the judge and magistrate of that province in 1801) "has fixed a value on real property here which is not attached to it in other parts of Bengal, and has given existence to a

¹ The sovereign could only assign the revenue under conditions limited by the Mahomedan law; the possessor could alone assign the property in the soil.

numerous body of landholders unknown elsewhere," who are afterwards stated to consider themselves, and to be recognized by the Court, as "the actual proprietors of the soil." In a subsequent passage we find these remarkable words: "If comfortable habitations and a numerous and healthy progeny be proofs of a happy condition, the estates in this division have contributed to increase population, and to rear a temperate and robust species of men fit for every sort of labour."

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GENERAL
OBSERVATIONS.

Para. 7, contd.

IV.—TAGORE LAW LECTURES (1874-75).

(a). It is remarked by Sir Henry Maine that the distinction between proprietary rights and rights which are not proprietary, is that the latter have their origin in a contract of some kind with the holder of the former. We have seen that Lord Cornwallis was under the impression that the rights of the ryots might be treated as derived in this way; but the regulations themselves save the rights of the ryots as they actually existed; and it is now the opinion of most authorities on the subject that the actual rights of the ryots were proprietary rights. They were not derived from, or carved out of, an original theoretically complete proprietary right in the zemindar, in the way that all interests in land in England are theoretically derived or carved out of the fee simple. Page 213.

(b). The Hindu law recognizes rights in the cultivators and in the sovereign, but does not appear to contemplate any ordinary use of the land, except for the purpose of cultivation, and contemplates an obligation to cultivate, corresponding to the right to cultivate, in the same way as it contemplates an obligation on the part of the king to protect the cultivator, corresponding with the right to receive revenue from him.* *

In Mahomedan law, again, we find no greater light thrown upon the question of the extent of the proprietary rights. The sale of land is contemplated, and the purchase of land for purposes of trade is spoken of, but no indication is given of the extent of the right which was transferred. We may, however, infer that it was at least a right to occupy and cultivate.

(c). If, then, express law is silent upon this point, we must look to the state of ideas, and to the practice of the various parties embodying these ideas. Such a practice is the foundation of what we knew as a custom; as Sir Henry Maine observes, "the foundation of a custom is habitual practice, a series of facts, a succession of instances, from whose constant recurrence a rule is inferred." The practice here referred to need not, I conceive, be an undisturbed practice; but it must be one constantly recurring, and, if disturbed, again resumed as a right. And for this reason it is necessary to take into consideration the ideas of those who reverted to the practice when disturbed. If we find that some cultivators were considered to have a right to go on cultivating so long as they paid the revenue, and that in practice they did continue permanent, and that when disturbed by the hand of power it was thought unwarrantable, we may, I think, fairly infer, with respect to such cultivators, that habitual practice and constant recurrence supplied by Sir Henry Maine's criterion as the foundation of a custom. And there can be little doubt that, as regards the interests in land, there was scarcely any other but custom. * *

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GENERAL
OBSERVATIONS.

Para. 7, contd.

(d). Again, the period for the growth of custom was not closed, and hence we must not expect to find a custom so full-grown as our English customs. And the main law on the present point must be deduced from such customs as existed, customs in process of growth. As Sir George Campbell says, custom was and is "the only ever-surviving law of the East." Acts which are now prohibited by law were then prohibited by custom, in the same way as some acts are now prohibited by public opinion. Such acts as were against custom were, when possible, resisted and were condemned as violations of right, and not merely as an unjust use of undoubted rights. It is almost impossible for us at this late period to discover whether any particular act was condemned as a clear violation of right, or merely as a wrong and unjust act done in exercise of a right. And therefore we can get little assistance, except from the actual practice and from general considerations as to the state of opinions.

8. The salient points in this appendix are as follow:—

I. A ryot is a cultivator who, whether by borrowing or in any other way, provides seed, cattle, implements, and labour for the land which he cultivates.

II. The authorities in India, including Sir John Shore and the Court of Directors, recorded emphatic testimony that more than upon anything else, the prosperity of the country depends upon the prosperity of the ryots, whose labours are the riches of the State. The Select Committee of the House of Commons, in 1831-32, recorded that the ryots' right is the greatest right in the country.

III. The most perfect form of ryots' title is that of the dependent talukdar, khoodkasht ryot, resident cultivator, or member of a village community. Even so late as 1832 (para. 3, section VII) "the most general tenure in the Lower Provinces is that of cultivating proprietors having a fixed right of occupancy, independently of any known contract, limited to specific fields, and subject to payment of an amount determinable on fixed principles, demandable as Government revenue, and in no case depending on the mere will and pleasure of another individual."

IV. The prevailing testimony is to the effect that this title was nothing more than a hereditary right of occupancy, subject to payment of Government rent; though the ryot might quit the land for years, yet he or his descendants could return and claim it, ousting any possessor who may have cultivated it in the interval. On the other hand, according to the testimony which thus restricts the right of occupancy, the ryot could not sell his land; but in the early period when this restriction is said to have prevailed, the khoodkasht ryots' land was practically not saleable, from the abundance

of waste land and scarcity of population, and from the circumstance that the khoodkasht ryot's fixed rent was higher than the pykasht's variable rent. When, from the rise of prices, the khoodkasht's rent fell below the pykasht's, and his land became saleable, he did sell, according to some of the testimony in this Appendix, including the testimony in September 1851 of well known Hindu authorities, such as Babus Sumbhunath Pundit, Unodaprosad Banerjea, Govindprosad Bose, and Hurrishunder Mookerjea, Editor of the *Hindoo Patriot*, and afterwards Assistant Secretary to the Bengal British Indian Association.

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 P. 277.
 L. 10. 11.

V. So long as the khoodkasht ryot paid the customary rent to the Government, not to a zemindar as landlord, he was not disturbed in the enjoyment of his property.

VI. The amount payable to Government was a definite proportion of the produce, demandable on fixed principles determined by local custom dating from remote time, and not dependent on the mere will or pleasure of any man.

VII. The Government share or proportion of the produce may have varied in different districts, according to local peculiarities, but in each district or village it was a fixed proportion, well recognized from immemorial or remote custom, and thus it formed a permanent settlement with the ryot.

VIII. Under the earlier native rule, the Government share was taken in kind, with an option to the cultivator to pay its value, instead, at the market price of the new crop, the Collectors being at the same time requested not to require a money-payment if it would distress the cultivator, who thus had the benefit of a permanent settlement, with the advantage of sharing with the Government his loss in a bad season equally with his gain in a good season, for he paid only on the actual produce of his land.

IX. In Toodur Mull's settlement, however, under Akbar, the collections for each village, on an average for some years, were ascertained, and the yearly average for each holding in the village was assessed upon a fixed amount per bigha. This, too, formed a permanent settlement with the cultivator, but with the disadvantage of his paying on the extent of his holding, and not on the actual produce of the soil in the year, is, without the benefit of the option. He had the option, however, of paying, instead, in the buttye system (see section VIII).

X. The assessment in Toodur Mull's settlement was not on the system of assessing the produce;—it was assessed on the extent of the land.

APP. IX. in money, and the amount having been fixed per beegah, it was not liable to increase on account of any subsequent rise of prices. The assessment was virtually a permanent settlement with the ryot. At any rate, it was not altered during more than 100 years.

SUMMARY.
para. 8, contd.

XI. The Government's fixed share or proportion of the produce was a maximum proportion, out of which remissions or reductions were allowed; the khoodkasht ryot, moreover, had extra land, not assessed, the profit from which helped him to pay the maximum share of Government on the produce of his assessed land. Hence the pergunnah rates of 1793, if simply continued at the same amounts to this day, but without the abatements for unfavourable seasons and for unassessed lands, would have been tantamount to enhanced rates. The actual facts are that, not only have those two moderating circumstances ceased, but the gross amounts of the old pergunnah rates have been greatly enhanced.

XII. The chupperbund ryots, or those strangers whom village communities received into their brotherhood as permanent resident cultivators, had nearly the same privileges as khoodkasht ryots.

XIII. The pykasht ryots were of inferior status: as tenants on temporary lease, or at will, the rates they paid were specially adjusted with the owners of their land; and at a time when there was competition for tenants, rather than for land, their rents were lower than those of the khoodkasht ryots.

XIV. The framers of the permanent settlement intended that the pergunnah rates then existing for ryots should be permanent, and through the care and painstaking work of the Collectors in the 24-Pergunnahs, Chittagong, Dinagepore, part of Tipperah, and Sylhet (para. 3, section I), the exemption of ryots in those districts from enhancement of rent was secured;—but, because the Collectors in other districts did not exercise like foresight and judgment, one essential part of the permanent settlement, without which the remaining provisions of that settlement entailed confiscation of rights, proved nugatory, and thereby millions of ryots have been subjected to enhancement of rents.

XV. The Select Committee of the House of Commons in 1831-32 reported that “the proper ascertainment, recognition, and security of the several tenures and rights within the villages, are objects of the highest importance to the

tranquillity of the provinces, and will greatly tend to the repression of crime. The natives of India have a deep-rooted attachment to hereditary rights and offices; and animosities originating from disputes regarding lands descend through generations. The vital question to the ryot is the amount of assessment which he pays."

APP. IX.
SUMMARY.
Para. 8, contd.

XVI. The Court of Directors, in reviewing the position in 1819, considered that, whatever might be the distinction between khoodkasht and pykasht ryots "as to their rights, it is clear that, in every respect, the two classes of ryots are equally entitled to the protection of Government; and we observe that you concur with us in the opinion that, however well intended for this purpose, our regulations under the permanent settlement have not been effectual to it."

APPENDIX X.

THE RYOT SINCE THE PERMANENT SETTLEMENT, AND GOVERNMENT'S OBLIGATIONS TOWARDS HIM.

APP. X. 1.—GOVERNMENT'S OBLIGATIONS TOWARDS RYOTS.

GOVERNMENT'S
OBLIGATIONS
TOWARDS RYOTS.

Para. 1.

Supplement to
Colebrooke's
Digest of the
Regulations.

I.—PRESIDENT AND SELECT COMMITTEE—*16th August 1769 (Bengal Government).*

(a). The ryot, too, should be impressed in the most forcible and convincing manner that the tendency of your measures is to his ease and relief; that every opposition to them is riveting his own chain, and confirming his servitude and dependence on his oppressors; that our object is not increase of rents, or the accumulation of demands, but solely by fixing such as are legal, explaining and abolishing such as are fraudulent and unauthorised, not only to redress his present grievance, but to secure him from all further invasions of his property.

(b). Among the chief effects which are hoped for from your residence in that province, and which ought to employ and never wander from your attention, are to convince the ryot that you will stand between him and the hand of oppression; that you will be his refuge, and the redresser of his wrongs; that the calamities he has already suffered have sprung from an intermediate cause, and were neither known nor permitted by us; that honest and direct applications to you will never fail of producing speedy and equitable decisions; that after supplying the legal due of the Government, he may be secure in the enjoyment of the remainder; and finally, to teach¹ him a veneration and affection for the humane maxims of our Government.

II.—WARREN HASTINGS—*1st November 1776 (not half so benevolent as Lord Cornwallis).*

Francis'
Revenues of
Bengal, pages
119-20.

(a). Many other points of enquiry will be also useful to secure to the ryots the perpetual and undisturbed possession of their lands, and to guard them against arbitrary exactions. This is not to be done by proclamation and edicts, nor by indulgences to the zemindars and farmers. The former will not be obeyed, unless enforced by regulations so framed as to produce their own effect, without requiring the hand of Government to interpose its support; and the latter, though it may feed the luxury of the zemindars, or the rapacity of the farmers, will prove no relief to the cultivator, whose welfare ought to be the immediate and primary care of Government.

¹ And a terribly benevolent and well-meaning teacher the Government of those days proved.

APP. X. step, if it should find upon consideration and experience that it was a false one. This enactment¹ was no part or condition of the permanent settlement; it is therefore revocable, and ought not to be maintained if found to be inconsistent with that protection of the ryots in their rights, and that security from arbitrary exactions, which did form, in principle at least, a part of the permanent settlement, and is the foundation as it were on which your revenue and judicial system professed to be built (*para. 54*).

GOVERNMENT'S
OBLIGATIONS
TOWARDS RYOTS.

Para. 1, contd.

V.—COURT OF DIRECTORS (*15th January 1819*).

It is well known (and even if it were questionable, the practice of the provinces which have lately fallen under our dominion would set the doubt at rest) that the cultivating zemindars (ryots) were, by a custom more ancient than all law, entitled to a certain share of the produce of their lands, and that the rest, whether collected by pergunnah zemindars or by officers of Government, was collected as the *huck* of the Circar (*para. 28*).

The paramount importance, on every ground of justice and expediency, as connected with the welfare and prosperity of the British empire in India, of adopting all practicable means for ascertaining and protecting the rights of the ryots, has, in our former correspondence, been made the topic of frequent and serious representation; nor can it be otherwise than most satisfactory to us to find that the members of your Government, and those acting under its authority in the internal administration of the country, are now so earnestly occupied in the furtherance of this most important and essential work (*para. 29*).

We fully subscribe to the truth of Mr. Sisson's declaration that "the faith of the State is to the full as solemnly pledged to uphold the cultivator of the soil in the unmolested enjoyment of his long-established rights, as it is to maintain the zemindar in the possession of his estate, or to abstain from increasing the public revenue permanently assessed upon him" (*para. 30*).

It is also a circumstance which is not to be overlooked, that, although so many years have elapsed since the conclusion of the permanent settlement, yet no resort has been had to the exercise of the power we then expressly reserved, of interfering for the purpose of defining and adjusting the rights of the ryots. We conclude that the supposed difficulty or impracticability of the operation was the cause of this non-interference. We find, however, that, antecedently to the permanent settlement, this power was successfully exercised in several parts of the territory under your Government; and that the advantages of this policy are still felt in those districts, although the general system of your revenue and judicial administration has been unfavourable to the preservation and improvement of the advantages thus obtained. We particularly allude to the 24-Pergunnahs and to part of Dinagepore (*para. 39*).

¹ Regulation V of 1812.

VI.—RIGHT HON'BLE JOHN SULLIVAN.

APP. X.

(a). The advocates for a permanent settlement could not more highly venerate the memory of the founder of that measure in Bengal, more estimate the value of proprietary right in the soil, or the advantages that attach upon perpetuity of tenure, than Lord Buckinghamshire, President of the Board of Control, and his colleagues, did, and endeavoured to support. The difference between those advocates and the Board turned upon a question as to the party in whom that right did and should continue to vest. It is hoped, from what has appeared in the preceding pages, that the question, not only of right, but the principle in policy, has been made apparent by the admission of the Supreme Government, after a long and laborious discussion in favour of the cultivating occupants of the soil.

GOVERNMENT'S
RIGHT TO INTER-
FERE FOR THE
RYOT RESERVED.

Para. 2.

Sess. 1831-32,
Vol. XI, page 65.

(b). The door may, therefore, be said to have been kept open for the restoration of that right to those who may have been unduly deprived of it, and for extending it to those migratory ryots who under encouragement may become stationary, thereby laying the best and surest foundation for the public prosperity.

VII.—COURT OF DIRECTORS (*10th November 1824*).

We regard this subject of the means of protecting the rights of the ryots by ascertaining and defining them, as of paramount importance, and the means of obtaining the end which is here proposed as affecting the character and prosperity of your Government more deeply than almost anything else to which your attention can be directed (*para. 30*).

Revenue
Selections, Vol.
III, page 443.

2.—THE GOVERNMENT'S OBLIGATION BEING RECOGNISED, THE
GOVERNMENT'S RIGHT TO INTERFERE FOR SECURING THE
RYOT'S RIGHTS WAS EXPRESSLY RESERVED IN THE PER-
MANENT SETTLEMENT.

I.—COURT OF DIRECTORS (*19th September 1792*).

(a). But as so great a change in habits and situation can only be gradual, the interference of Government may, for a considerable period, be necessary to prevent the landholders from making use of their own permanent possession for the purposes of exaction and oppression; we therefore wish to have it distinctly understood that, while we confirm to the landholders the possession of the districts which they now hold, and subject only to the rent now settled, and while we disclaim any interference with respect to the situation of the ryots, or the sums paid to them, with any view to any addition of revenue to ourselves, we expressly reserve the right which clearly belongs to us as sovereigns, of interposing our authority in making from time to time all such regulations as may be necessary to prevent the ryots being improperly disturbed in their possessions or loaded with unwarrantable exactions. A power exercised for the purposes we have mentioned, and which has no view to our own interests, except as they are connected with the general industry and prosperity of the country, can be no object of jealousy to the landholders,

Report of Selk
Committee, 18
App. 2-a,
pages 174-75.

APP. X. and instead of diminishing will enhance the value of their proprietary rights. Our interposition where necessary seems also to be clearly consistent with the practice of the Mogul Government, under which it appeared to be a general maxim that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupied. This necessarily supposes that there were some measures and limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zemindar, for otherwise such a rule would be nugatory. * *

GOVERNMENT'S
RIGHT TO INTER-
FERE FOR THE
RYOT RESERVED.

Para. 2, contd.

(b). * * You will, in a particular manner, be cautious so to express yourselves as to leave no ambiguity as to our right to interfere from time to time, as it may be necessary, for the protection of the ryots and subordinate landholders, it being our intention in the whole of this measure effectually to limit our own demand, but not to depart from our inherent right as sovereigns of being the guardians and protectors of every class of persons living under our Government (*paras. 46 and 48*).

Ibid., App. 9,
page 103.

[The foregoing was embodied in section 8, Regulation I, of 1793, and a clause to the above effect is also inserted in the engagements with the landholders.]

II.—COURT OF DIRECTORS (15th January 1819).

Sess. 1831-32,
Vol. XI, pages
92-3.

(a). Although the zemindars with whom the permanent settlement was made are, in the regulations respecting that arrangement, declared to be "the actual proprietors of the soil;" although their zemindaries are called landed estates, and all other holders of land are denominated their "under-tenants;" and although, as we shall have occasion more particularly to observe in the course of this despatch, the use of these terms, which has ever since continued current, has, in practice, contributed, with other causes, to perplex the subject of landed tenures, and thereby to impair, and in many cases to destroy, the rights of individuals, yet it is clear that the rights which were actually conferred upon the zemindars, or which were actually recognized to exist in that class by the enactments of the permanent settlements, were not intended to trench upon the rights which were possessed by the ryots. Lord Cornwallis explicitly recognized the ryot's title to be protected by Government in his rights," and the right to accord this protection was reserved in section 8 of Regulation I of 1793 (*paras. 13 and 15*).

III.—MR. HOLT MACKENZIE (1832).

Sess. 1831-32,
Vol. XI, page
293.

(a). It was not, I think, until after 1813, in so far at least as concerns the Bengal Presidency, that much thought was given in the management of the main item of revenue (the land rent) to the rights and interests of the great body of the people. The principle of the zemindary or contract settlements (using the term zemindar as employed in Bengal proper) was non-interference; the men who engaged to pay the Government demand, and those from whom they collected it, being

left to settle the disputes necessarily arising out of the relation in the best way they could, under laws passed for the guidance of the Courts of Judicature. The right of interfering was indeed reserved to Government (it could not have been relinquished without an abandonment of its highest functions), and rules were passed against the arbitrary enhancement of demands upon the cultivators, which seemed to show the intention of the legislature to regard the zemindar as possessing in many cases merely the right of collecting a fair assessment, and as being assessors of the public demand—not rent-holders.

(b). The right of interference is clear, and has indeed been specifically reserved; and in many cases, I doubt not the rules against arbitrary enhancement of rent would enable us, in making a settlement with the ryots, unquestionably to restrict the zemindar's demand within such bounds as would leave the former a property of value in these fields. But in other cases the question will arise how far (the Government having assigned to the zemindars a right which, if strictly¹ enforced, will swallow up the property of the inferior tenantry) we can now come and proceed on general principles to limit that right. If done without their consent, we must, I apprehend, interfere by a new law, and be prepared to allow the zemindars compensation, or allow a reduction of revenue.

App. X.

GOVERNMENT'S
RIGHT TO INTER-
FERE FOR THE
RYOT RESERVED.

Para. 2, contd.

Masterly inac-
tivity.*Ibid.*, question
2673.

IV.—MR. A. D. CAMPBELL (1832).

The pledge, reserving the right to protect the ryots, indeed still stands forth on the front of the Bengal Regulations; but the Government, having once shut themselves out from all direct communication with the village landholders, by permanently interposing the zemindars between themselves and the cultivators, have hitherto entirely neglected to redeem it. In 1786, the Court of Directors of the East India Company observed: "In ordering the settlement (or revenue contract) to be made in every practicable instance with the zemindar, we conceive that we adopt the true spirit of the 30th section of the Act of the 24th of Geo. 3rd." In 1792 they proceed to state that "in order to simplify and regulate the demands of the zemindars upon the cultivators, the first step is to fix the demand of the Government itself" upon the zemindar; and justly treating this as the mere preliminary to a far more important ultimate end, they add, "we are led to believe that the situation of the ryot varies in different districts, according to local manners, customs, or particular agreements, and it appears as if in some instances the rights of ryots of different descriptions, though in the same district, are considered more or less permanent and secure. The application, therefore, of any general principles must be guided by minute local investigation, and we shall expect particular regulations, adapted

Ibid., App. G,
page 13.

¹ Mr. Mackenzie was referring here to the conventional 50 per cent, or half-produce, as the Government's share, which he considered would generally swallow up "all the rent" (question 2671); but he overlooked the considerations that the 50 per cent. was maximum rate, and that the ryots had concealed cultivation on which they paid no rent, and for which consequently the Government was taking nothing from the zemindar, and that the zemindar was precluded from measuring the ryot's lands so long as he paid the customary rent on his assessed lands.

APP. X.
 —
 GOVERNMENT'S
 RIGHT TO INTER-
 FERE FOR THE
 RYOT RESERVED.
 —
 Para. 2, conclud.

to all the different circumstances, to be prepared and finally submitted to our consideration." In 1793, Lord Cornwallis, in reply, without allusion to any such particular rules, merely refers to his general enactment (Regulation I of 1793, section 8), as reserving to Government the power of hereafter framing such regulations as they may occasionally think proper "for the protection of the ryots and inferior landholders, or other orders of people concerned in the cultivation of the lands." It is true that the Committee of the House of Commons in 1812 (Fifth Report) reported that "with respect to the cultivators or ryots, their rights and customs varied so much in different parts of the country, and appeared to the Government to involve so much intricacy, that the regulation (VIII of 1793) only provides generally for engagements being entered into, and pottahs or leases being granted by the zemindar; leaving the terms to be such as shall have been customary, or as shall be particularly adjusted between the parties; and in this it is probable that the expectations of Government have been fulfilled, as no new regulation yet appears, altering or rescinding the one alluded to." But the very reverse has been the actual result.

3.—DESTRUCTION OF RYOTS' RIGHTS.

I.—COURT OF DIRECTORS (*15th January 1819*).

Sess. 1831-32,
 Vol. XI,
 App. 11.

(a). Such (paragraphs 1 and 2 above) having been the sentiments of Lord Cornwallis and the ruling authorities in England, and such having been the acts of the Local Government on the first introduction of the permanent settlement, the question naturally occurs, whence it has arisen (to use your own words) "that our institutions are so imperfectly calculated to afford the ryots, in practice, that protection to which on every ground they are so fully entitled," so that it too often happens that the quantum of rent which they pay is regulated neither by specific engagements, nor by the established rates of the pergunnahs or other local divisions in which they reside, but by the arbitrary will of the zemindars.

(b). We have of late years taken frequent occasion to call the attention of your Government to the state of insecurity and oppression in which the great mass of cultivators were placed; but we must confess that, anxiously and fully as this subject had engaged our thoughts, we had not formed an adequate idea of the state of things under your Government, in this respect, until we met, in its proceedings, with the correspondence between the judicial functionaries and the Court of Sudder Adawlut, which was referred by you in 1809 and 1810 to the consideration of the Board of Revenue, the answers which were returned by the Collectors of districts to the circular letter of that Board, dated 7th June 1811, and the minute of Mr. Colebrooke thereon.

(c). Among the most important documents upon this interesting subject which have lately reached us, are the report of Mr. Cornish, Fourth Judge of the Patna Court of Circuit, dated the 26th July 1814; the letter of the Board of Commissioners, and the minutes of Messrs. Roelke and Colebrooke, of the Board of Revenue, recorded on your Revenue Consultations of the 12th August 1815; the letter addressed

by Mr. Thomas Sisson, under date the 2nd April 1815, on the relative state of the landlord and tenant in the district of Rungpore; and the Governor General's minutes of the 21st September and 2nd October 1815, on the revenue and judicial administration of the territories dependent on your Presidency, together with the reports of the local officers which accompanied them.

APP. X.

RYOTS' RIGHTS
DESTROYED.

Para. 3, contd.

(d). The documents here enumerated unequivocally confirm the truth of all the information of which we were previously possessed, respecting the absolute subjection of the cultivators of the soil to the discretion of the zemindars, while they exhibit to us a view of things, with reference to the landed tenures and rights of that valuable body of the people, which satisfies us that a decisive course of measures for remedying evils of such magnitude must be undertaken without delay.

(1). MR. CORNISH states on this subject: "The ryots conceive they have a right to hold their lands so long as they pay the rent which they and their forefathers have always done. The zemindars, though afraid openly to avow, as being contrary to immemorial custom, that they have a right to demand any rent they choose to exact, yet go on compelling them to give an increase; and the power of distraint, vested in them by the regulations, soon causes the utter ruin of the resisting ryot."

(2). MR. COLEBROOKE asserts, from his own experience, that disputes between zemindars and ryots, in the Lower Provinces, were less frequent and more easily determined anterior to 1793 than they now are; and he further states that "the provisions contained in the general regulations for the permanent settlement, designed for the protection of ryots or tenants, are rendered wholly nugatory," and that "the courts of justice, for want of definite information respecting their rights, are unable effectually to support them. I am disposed, therefore," he adds, "to recommend that, late as it now is, measures should be taken for the re-establishment of fixed rates, as nearly conformable to the anciently established ones as may be yet practicable, to regulate distinctly and definitely the relative rights of the landlord and tenantry."

(3). MR. SISSON, in his letter on the relative state of landlord and tenant in Rungpore, describes the "arbitrary oppression under which the cultivator of the soil groans, as having at length attained a height so alarming as to have become by far the most extensively injurious of all the evils under which that district labours;" and expresses an apprehension "that until by a steady adherence to the most decisive and vigorous measures the bulk of the community shall have been restored from their present state of abject wretchedness to the full enjoyment of their legitimate rights, it will be in vain to expect solid and substantial improvement." The sentiments of many other of the local authorities employed in the internal administration of the country, whose reports are now before us, are equally strong upon this subject.

(4). THE MARQUIS OF HASTINGS describes the situation of the village zemindars to be such as to call loudly for the support of some legislative provision. "This," observes his Lordship, "is a question which has not merely reference to the Upper Provinces" (of which he had previously been speaking), "for, within the circle of the perpetual settlement, the situation of this unfortunate class is yet more desperate. In Burdwan, in Behar, in Cawnpore, and indeed wherever there may have

APP. X.

RYOT'S RIGHTS
DESTROYED.

Para. 3, conclud.

existed extensive landed property at the mercy of individuals, whether in farm or jagheer, in talook or in zemindary, of the higher class, complaints of the village zemindars have crowded in upon me without number; and I had only the mortification of finding that the existing system established by the Legislature left me without the means of pointing out to the complainants any mode in which they might hope to obtain redress. In all these tenures, from what I could observe, the class of village proprietors appeared to be in a train of annihilation, and unless a remedy is speedily applied, the class will soon be extinct."

(e). In the consideration of this subject it is impossible for us not to remark that consequences the most injurious to the rights and interests of individuals, have arisen from describing those with whom the permanent settlement was concluded, as the *actual proprietors of the land*. This mistake (for such it is now admitted to have been), and the habit which has grown out of it, of considering the payments of the ryots as rent instead of revenue, have produced all the evils that might have been expected to flow from them. They have introduced much confusion into the whole subject of landed tenures, and have given a specious colour to the pretensions of the zemindars, in acting towards persons of the other classes as if they, the zemindars, really were, in the ordinary sense of the words, the proprietors of the land, and as if the ryots had no permanent interest but what they derived from them. * * There can be no doubt that a misapplication of terms, and the use of the word "rent," as applied to the demands on the ryots, instead of the appropriate one of "revenue," have introduced much confusion into the whole subject of landed tenures, and have tended to the injury and destruction of the rights of the ryots (*paras. 54 and 63*).

II.—LAW AND CONSTITUTION OF INDIA.

120.

When the Emperor Akbar approved the settlement submitted to him by his able Financial Minister Rajah Todur Mull, * * the law of the land was not altered by the minister, and by his able Mahomedan colleague, Mujuffur Khan, but a settlement was made, having the law for its basis, and the detail was ably projected and superintended by those valuable servants of the State, who neither did, nor would have dared to depart, in anything essential, from the law and the usage of the country.

In modern times, conquering¹ statesmen have greater confidence. They do not hold themselves hampered by custom, however sacred, ancient, or universal! There is not in the history of the world a more extraordinary instance of disregard of the usages of a people, than is to be found in the conduct of those who swayed the councils of India when the great financial innovation of 1793 swept away the ancient landholders of Bengal, and limited its territorial revenue for ever.

4. The authors of the permanent settlement with zemindars saw clearly enough that the dangers attending it were a

¹ The permanent settlement was concluded in virtue of dewanny rights acquired under treaty.

possible loss of revenue (or, as the authorities a few years later perceived, a stationary revenue with a growing expenditure), and the destruction of the ryots' rights. The former was regarded with horror and shrinking fear, the latter with an airy confidence that all would come right by the zemindars giving pottahs to the ryots. Respecting the financial results of the settlement it was observed—

APP. X.
FINANCIAL CONSEQUENCES OF THE PERMANENT SETTLEMENT.

Para. 4, contd.

I.—COURT OF DIRECTORS (*19th September 1792*).

No consequences more formidable could be presented to us from the proposed system than a diminution in perpetuity of the Company's revenue, with the still continued subsistence of all or any of those disorders in the mode of imposing and levying it from the great body of the people, which have already done such essential injury to the country, and must ever prove a bar to its prosperity. Very clear and solid arguments were requisite to dispel the diffidence which this view of the subject, from such an authority as Mr. Shore, had a tendency to create, and to encourage us to persevere in our original idea of giving a fixed constitution to the finance and land tenure of the country. But this satisfaction Lord Cornwallis has afforded us in his minutes of the 18th September 1789 and 3rd February 1790.

Select Committee, 1810.

II.—COURT OF DIRECTORS (*16th December 1812*).

(a). In the permanent settlement of the Bengal Provinces, the protection of the ryots against the oppressions and exactions of the zemindars, was justly held to be the main spring from which the improvement of the country and of its internal resources was to be expected; and an express provision was accordingly made in the regulations that were passed when that settlement was formed, and the principles of it promulgated, requiring that pottahs should be given by the zemindars to the ryots. There are, however, but too strong proofs on the records of the Supreme Government that this Regulation has almost become a dead letter (*para. 10*). * *

Sess. 1831-32,
Vol. XI, page
401.

(b). We applaud the principle which first suggested the introduction of Lord Cornwallis' judicial system into the British possessions in India, and we venerate the character from which it emanated; but the experience of nearly twenty years in Bengal has furnished unequivocal evidence that it has not been possible, by every practicable extension of the judicial establishment, to render it adequate to the great end for which it was instituted, namely, the speedy as well as the impartial administration of justice; but that, while the expenditure has been augmented from the sum of 220,000*l.*, at which the annual charge for the provinces of Bengal, Behar, and Orissa, not including the charge of police and the diet of prisoners, was calculated by Lord Cornwallis, to the sum of 306,000*l.*, at which the correspondent expenditure had arrived in those provinces by the accounts for 1809-10, and which, by its extension to the ceded and conquered territories under that presidency

APP. X. alone, amounted, in that year, to the alarming expenditure of 870,000*l.*, still the arrear of causes has gone on increasing, until it has attained a height that calls imperiously for the application of some effectual remedy.

FINANCIAL CONSEQUENCES OF THE PERMANENT SETTLEMENT.

Para. 4, concld.

And so the Court of Directors would have none of the permanent settlement for the temporarily settled provinces. A fixed income and a growing expenditure of the Government were regarded as intolerable; but the prevention of growing demands of zemindars and diminishing incomes of millions of cultivators was matter in 1793 for a hopeful, airy confidence in the all-saving efficacy of a zemindary settlement.

5. Pottahs from zemindars to ryots will keep everything straight.

I.—COURT OF DIRECTORS (*19th September 1792*).

Select Committee, 1810, page 175.

In the meantime it must be the duty of our servants to watch incessantly over the progress of the change introduced by the permanent zemindary settlement, to see that the landholders observe punctually their agreements with Government and with the ryots; that they neither pass invented claims on the eve of a permanent settlement, nor fraudulently shift the burthen of revenue by collusive transfers, nor by any other sinister practices diminish the payment of their stipulated assessments; that they likewise give to the ryots written specific agreements, as also receipts for all payments, and that those agreements be on the one side and the other fairly fulfilled. In this way and in this only can the system be expected to flourish (*para. 49*).

II.—COURT OF DIRECTORS (*6th January 1815*).

Selections, Vol. I, page 284.

We cannot with too much earnestness direct your attention to the enforcement of the pottah regulation, a measure which was contemporaneous with the permanent settlement, was then considered as an essentially necessary branch of the system, and upon the observance of which the security of the ryots, and consequently the general prosperity of the country, were stated mainly to depend. Had that regulation been duly enforced, and had the penalties attached to the breach of it been regularly imposed, a degree of confidence might¹ have been established between the zemindars and ryots, which would gradually have spread its influence into our other provinces. * * But it has unfortunately happened, and we must say much to the discredit of the executive authorities abroad, that the pottah regulation has been suffered to become a dead letter. The only immediate security for the ryots against undue exaction is that regulation, and if measures are not speedily adopted to enforce compliance with its salutary provisions, the ryots must continue entirely at the mercy of the zemindars or renters (*paras. 46 to 48*).

On the contrary, the pottah regulation, which the Government vainly hoped would curb the zemindar, was used by him as an engine of oppression.

III.—COURT OF DIRECTORS (15th January 1819).

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With respect to the original pottah, Regulation VIII of 1793, we have to observe that more seems to have been expected from its enactments in favour of the ryots than they were calculated to effect unsupported by other institutions, and that it was in fact almost wholly nugatory (*para. 45*).

POTTABS FROM
ZEMINDARS WILL
KEEP EVERY
THING STRAIGHT.

Para. 6.

Sess. 1831-32,
Vol. XI, page 97.

IV.—GOVERNMENT RESOLUTION (1st August 1822).

The example of Bengal has shown that further securities than those provided in the existing Code are indispensable, and his Lordship in Council is strongly inclined to the opinion that no real security can be given to the ryots, unless we distinctly act upon the principle of minutely ascertaining and recording the rents payable by individual ryots, of granting pottahs, or, at least registering the ryots' holdings, and of maintaining the rates established at the settlement during the term of such settlement, as an essential part of the assessment. The adoption of this course will apparently be entirely consistent with everything we know of fixed principle in the system of preceding Governments (*para. 25*).

Ibid., page 221.

6. This reliance on the sufficiency of pottahs to secure the ryots evinced an astonishing credulity, and was accompanied by a curious ignorance of the main facts, on the part of the authors of the permanent settlement.

I.—CREDULITY.

(a).—LORD CORNWALLIS.

Mr. Shore's proposition that the rents of the ryots, by whatever rule or custom they may be demanded, shall be specific as to their amount; that the landholders shall be obliged within a certain time to grant pottahs or writings to their ryots, in which this amount shall be inserted, and that no ryot shall be liable to pay more than the sum actually specified in his pottah, if duly enforced by the collectors, will soon obviate the objection to a fixed assessment founded upon the undefined state of the demands of the landholders upon the ryots.

Fifth Report,
page 486.

When a spirit of improvement is diffused throughout the country, the ryots will find a further security in the competition of the landholders to add to the number of their tenants.

(b).—LORD MOIRA (21st September 1815).

It has been urged, however, that though the rights of the former cultivating proprietors have passed away *sub silentio*, still, as the zemindar and his tenants have reciprocal wants, their mutual necessities must drive them to an amicable adjustment. The reciprocity is not, however, so clear. The zemindar certainly cannot do without tenants, but he wants them upon his own terms, and he knows that if he can get rid of the

Sess. 1831-32,
Vol. XI, page 84,
App. 2.

APP. X. hereditary proprietors who claim a right to terms independent of what he may vouchsafe to give, he will obtain the means of substituting men of his own; and such is the redundancy of the cultivating class, that there will never be a difficulty of procuring ryots ready to engage on terms only just sufficient to secure bare maintenance to the engager (*paras. 146 and 147*).

GOVERNMENT'S
CREDULITY AND
IGNORANCE.

Para. G, contd.

II.—IGNORANCE.

LORD CORNWALLIS' GOVERNMENT REPORTING THE PERMANENT SETTLEMENT IN LETTER TO COURT OF DIRECTORS (*6th March 1793*).

From the proceedings which we shall forward to you by the next despatch, you will find that we have anticipated your wishes respecting the pottahs to be granted by the landholders to the ryots. It is with pleasure we acquaint you that throughout the greater part of the country specific agreements have been exchanged between the landholders and the ryots, and that where these writings have not been entered into, the landholders have bound themselves to prepare and deliver them by fixed periods. We shall here only observe that under the new arrangements to which we shall presently advert, the ryots will always have it in their power to compel an adherence to these agreements by an appeal to the Courts of Justice whenever the landholders may attempt to infringe them (*para. 20*).

7.—THE POTTAH REGULATION SCORNE BY THE ZEMINDAR.

I.—COLLECTOR OF RAJSHAHYE (*16th August 1811*).

The regulations have now been printed and published since 1793, a period of eighteen years; and I am convinced, notwithstanding the wish of Government that pottahs should be granted and kabuliats taken, there are as few now as ever there were. It will naturally be asked—how does this happen? The only explanation I can offer is, that the rights of the ryots have never been determined, or if determined not well understood. The consequence is, the zemindar, who pretends to consider his ryot a tenant-at-will, tenders a pottah at an exorbitant rate; the ryot, who considers himself (from the circumstance of having held his lands for a very long period) a species of mokururidar, conceives that he is entitled to hold his lands at a fixed rent, and therefore refuses the pottah; the zemindar distrains, and the ryot is ruined.

II.—SIR EDWARD COLEBROOKE (*5th January 1819*).

No particular measures appear to have been adopted for enforcing the delivery of pottahs, and we may observe that documents of this description are only applicable to the labouring tenants. A person connected with the property in the soil will never accept a pottah from the nominal zemindar, or person under engagements with Government; he holds his land and regulates his payments by a much more solid tenure, and would

consider himself as departing from his rights, by the acceptance of a document tending to convert him from a Malik to an Assamee. It will accordingly be found in the correspondence already submitted to your Lordship, relative to the byacharry tenures in Bundeund, that the enforcement of the delivery of pottahs has been the instrument through which the purchasers of estates in that district have attempted to annihilate the putteedary rights. Pottahs, however, appear to be general in some districts, but where the putwary accounts are regularly kept, they are, to both landlord and tenant, a sufficient substitute for pottah and cabooleut (*para. 12*).

APP. X.

—
POTTAH REGULA-
TION MOCKED
BY THE ZEMIN-
DAR.

—
Para. 7, contd.

III.—MR. SISSON'S REPORT (*2nd April 1815*).

(a). It had been enacted by section 2, Regulation XLIV, 1793, that no lease whatever, except for erection of houses and for gardens, could be made for a longer period than ten years. This regulation had been modified in favour of the ryot the following year; but not by exempting him from the operation of that regulation, but by entitling him to a renewal of his lease after the expiration of the period which had been limited by the rule above cited (*para. 17*).

(b). Regulation V of 1812 annuls the provisions of Regulation XLIV of 1793, and provides that the renewal of pottahs as prescribed by Regulation IV, 1794, is no longer necessary, and that the landlord and tenant are at liberty to come to such agreement as may mutually appear to them conducive to their respective interests.

(c). It will be allowed that the illiterate ryot could never, under the old rules, have felt his right to perpetual possession confirmed by a deed which expressly limited his lease to ten years. On the contrary, it is well known to those who have been at the pains to enquire into the opinions of the lower orders, that the ryots, in general, have always felt a solicitude to avoid taking such pottahs, under the impression that they would, thereby, be compromising their right to unlimited occupancy.

(d). They see nothing of the law but what, in the limitation of the pottahs under Regulation XLIV, 1793, to ten years, militates against the existence of such a right, and therefore they can have no opportunity of reconciling the circumstance of limitation with the preservation of it. Let them go to the Mundul or Pramanick; he is equally ignorant with themselves; or if he has casually heard vague mention of the favourable clause, being in nine cases out of ten bribed to the interest of the zemindar, it is not likely that he will be communicative. Let them go to their putwary; he is in the regular pay of the zemindar, and is removable from office at his pleasure; from him, therefore, they will collect nothing favourable. Let them go to the moonsiff; here they not unfrequently find as much ignorance as before, and always as much collusion in favour of the opposite party.

(e). Under these circumstances, it may easily be imagined that a ryot whose lease, granted in pursuance of Regulation XLIV, 1793, for a period of ten years, had expired in 1803, considering his right to unlimited occupancy to have been destroyed by his having taken a pottah for a

APP. X.

—
POTTAH REGU-
LATION INTRODUCED
BY THE ZEMIN-
DAR.

—
Para. 7, contd.

limited period, would feel himself, at the end of that period, altogether dependent upon the caprice of his landlord for a renewal of his lease upon any terms. This I know to have been a very general effect of the limitation noticed. Is it to be wondered at that the zemindar should convert this ignorance on the part of the ryot into a means of self-enrichment? After the expiration of the decennial pottah, where such pottahs have been granted, the zemindar has, if he found the condition of the land admitted it, very generally enhanced the rate of the former lease, and given the new pottah for a much shorter term than ten years.

IV.—LORD MORRIS (21st September 1815).

(a). In all these tenures, from what I could observe, the class of village proprietors appeared to be in a train of annihilation; and, unless a remedy is speedily applied, the class will become extinct. Indeed, I fear that any remedy which could be proposed would, even now, come too late to be of any effect in the several estates of Bengal; for the license of twenty years which has been left to the zemindars of that province will have given them the power, and they have never wanted the inclination, to extinguish the rights of this class, so that no remnants of them will soon be discoverable.

(b). The cause of this is to be traced to the incorrectness of the principle assumed at the time of the perpetual settlement, when those with whom the Government entered into engagements were declared the sole proprietors of the soil. The under-proprietors were considered to have no rights, except such as might be conferred by pottah; and there was no security for their obtaining these on reasonable terms, except an obviously empty injunction on the zemindar amicably to adjust and consolidate the amount of his claims.

(c). The indefeasible right of the cultivating proprietors to a fixed share of the produce was annihilated by our directing that pottahs should be executed for a money payment, in which all the claims of the zemindars should be consolidated. The under-proprietor was thus left to the mercy of the zemindar, to whose demands there were no prescribed limits. The zemindar offered a pottah on his own terms. If the under-proprietor refused it, he was ejected, and the courts supported the ejection. If the under-proprietor conceived that he could contest at law the procedure, a regular suit, under all the disadvantages to which he is known to be exposed, was his only resource; but when, after years of anxiety and of expense, the case was at last brought to a hearing, he lost his action, because it was proved that the pottah was offered and refused, and there was no criterion to which he could refer as a means of proving that the rate was exorbitant.

(d). The omission of the framers of the perpetual settlement to fix any criterion for the adjustment of these disputes, has not been supplied to this day. The consequence of the omission, in the first instance, was a perpetual litigation between the zemindars and the under-proprietors, the former offering pottahs on their own terms, the latter not having forgotten that they possessed rights independent of all pottahs, and

refusing demands they conceived unconscionable. When, at last, the revenue of Government was affected by the confusion which ensued, without inquiring into the root of the evil, the Legislature contented itself with arming those who were under engagements to the Government with additional powers, so as to enable them to realise their demands in the first instance, whether right or wrong—a procedure which unavoidably led to extensive and grievous oppression.

(e.) On the large estates, I believe, it will be found that the system of pottah and kabuliut has not yet been fully established between the zemindars and the cultivating proprietors. The zemindar takes engagements from the farmers and officers he employs to collect his rents, and in the event of their failure, makes the lands and the crops answerable for the amount. The zemindar feels none of the evils of insecurity; for, as far as the whole produce of the soil will go, he is armed by the VIIth Regulation of 1799 with the power of enforcing his demand; and considering the constitution of our civil courts, it seems unanimously agreed that the ryot or under-proprietor, unless he be a puttidar, is debarred any adequate means of redress for the most manifest extortions.

APP. X.
—
POTTAH REGU-
LATION MOCKED
BY THE ZEMIN-
DAR.
—
Para. 8.

8.—POTTAHS DECLINED BY KHOODKHAŠT RYOTS.

I.—SIR J. SHORE (*June 1789*).

(a). Pottahs to the khoodkasht ryots, or those who cultivate the land of the village where they reside, are generally given, without any limitation of period; and express that they are to hold the lands, paying the rents for them from year to year. Hence the right of occupancy originates.

Fifth Report,
Page 208.

* * The pottahs to *pykhast* ryots are generally granted with a limitation in point of time (*paras. 406-7*).

(b). *Chittagong*.¹—It has never been the custom to grant pottahs to the fixed jumlabundy ryots, who would refuse them on an idea that the zemindars might then grant pottahs to whom they pleased (and generally the reports of other collectors testified that pottahs were not in use).

(c). No order of Government should ever be issued unless it can be enforced; to compel the ryots to take out pottahs where they are already satisfied with the forms of their tenure, and the usages by which rents are received, would occasion useless confusion; and to compel the zemindar to grant them under such circumstances, or where the rules of assessment are not previously ascertained, would in my opinion be nugatory (*para. 432*).

II.—COLLECTOR OF SAHARUNPORE (*9th January 1816*).

Where established rates exist, they are so far considered binding upon the good faith of the landholder that pottahs are seldom or never required or granted.

¹ Collector of Chittagong, quoted by Sir John Shore.

APP. X. III.—MR. SISSON (*2nd April 1815*).—*See paragraph 7, section IIc.*

POTTABS RE-
FUSED BY RYOTS.

Para. 8, contd.

Ibid, page 258.

IV.—RESOLUTION OF GOVERNMENT (*22nd December 1820*).

(a). The cultivating proprietors naturally resist what they consider an attempt to reduce them from being the co-sharers, to the situation of the under-tenants of their engaging brethren, and to convert a tenure of independent property derived from their ancestors by immemorial succession, into one of modern creation and uncertain stability (*para. 200*). * *

(b). Thus, however desirable in itself that all engagements should stipulate the payment of a specific sum of money for a certain quantity or defined tract of land, yet both zemindars and ryots, and more especially the latter, will, in a multitude of cases, strongly object to such a scheme; and former attempts to effect the distribution of pottabs seem very generally to have owed their failure to the endeavour at giving to those instruments a precision inconsistent with the usages of the country, and repugnant to the habits and prejudices of the people. In many cases, too, the objections to fixed money-payments appear to be well founded, the precariousness of the produce and the poverty of the cultivator rendering it necessary that the rent should either be paid in a proportion of the crop, or that the ryots should adopt the less advantageous mode of trusting to an undefined understanding that a part of the stipulated rent will eventually be relinquished (*para. 201*).

V.—RESOLUTION OF GOVERNMENT (*1st August 1822*).

In all practicable cases, pottabs shall be granted to each ryot, or at least a distinct register should be prepared, specifying lands held by each, and the conditions attaching to the tenure. The collectors will, of course, understand that, however desirable it is to render the engagement of the cultivator specific, both as to land and rent, it is not intended to force things unnaturally to this issue. In many cases the objections of the ryots themselves to engage permanently to cultivate a given extent of land will probably be found insuperable, and in such cases it may not be practicable to do more than to prepare a general schedule specifying the rates and conditions on which the land is to be cultivated (*paras. 214 to 216*).

VI.—SIR J. SHORE (*28th June 1789*) (*quoting the Collector of Behar*).

Harington's
Analysis of the
Regulations,
pages 256-57.

(a). My difficulties have originated with the ryots, who, in this part of the country, have an insuperable aversion to receive pottabs or execute cabuliuts, for specific quantities of land. The origin of this aversion is two-fold, *viz.*, partly an apprehension lest, from the disease or loss of their cattle, kinsmen or servants (by which term I mean particularly to allude to *cummeas* or ploughmen), they should be unable to bring the

whole specified quantity into cultivation; and partly a dread lest, after having brought it into cultivation, the expected crop should be damaged, or destroyed by drought, storms, or inundation. Of the 45 pergunnahs (including the jageers) which compose this district, there is not one in which I have not spoken with the ryots of several villages on this subject, and heard the same objection from all. It is not therefore from report, but from personal knowledge, that I state their sentiments. I well remember that, on my observing to a head ryot belonging to a village not far from the jageer of the Nawab Delawur Jung "that the ryots refusing to enter into counter engagements was hard upon the zemindars, as it prevented these last from estimating with precision the value of their lands; the man replied: "We ryots are sensible of this; but as we are poor and the maliks rich, and as they have many other advantages over us, it is but just that in this respect they should be bound, while we in some measure remain free;" adding, "if you will examine into the state of the Nawab's jageer, you will see the bad effects of endeavouring to oblige the ryots to receive pottahs specifying the quantity of ground they are to pay rent for." As the reply fixed my attention, I immediately made further enquiry, and found that the assertion was literally true, a number of ryots having actually left the jageer in consequence of the Nawab's manager having strongly urged them to receive pottahs specifying the quantity of ground to be rented by them. Yet Hajee Jakoot Khan, the Nawab's manager, is a very liberal and enlightened man, and appears to have had no object in view but the prevention of chicane and the further security both of the landholders and the ryots.

(b). In consequence of this reluctance on the part of the ryots to enter into specific engagements, the following mode is pretty generally adopted in this part of the country. The zemindar signs and deposits in each village a voucher (which is, though somewhat improperly, called a pottah) specifying the rates and terms on which ryots may cultivate land in that village. This voucher serves the ryots as a guide. If they approve of the rates, they take attested copies of the instrument and cultivate as much ground as they can, though, for the reasons above specified, they will not engage for a certain number of beegahs. When the crop is ripe, the land is measured, and the ryot or tenant pays the rent thereof to the zemindar, according to the rates specified in the general village pottah. But in adjusting the accounts it is always understood, though not, indeed, expressed in writing, that the ryot is only to pay *in proportion to the produce*; and that in the event of his crop having failed or being damaged, he is to receive a proportional deduction according to the rates expressed in the village pottah; and this indulgence it is which chiefly renders the ryots so unwilling to engage to pay rent for specific quantities of ground, lest, if they did, they should be considered as obliged to pay rent for the whole, even though they might not have been able to bring it into cultivation. It is also understood that the ryot has a sort of prescriptive right to continue in the ground thus occupied by him, while he adheres to the rates expressed in the village pottahs, insomuch that I do not recollect an instance of a zemindar's having attempted to remove a ryot who has not been guilty of a breach thereof.

APP. X.

POTTAHS REFUSED BY RYOTS.
Para. 8, contd.

APP. X. VII.—MR. J. MILL (*19th August 1831*).

POTTABS
REFUSED BY
RYOTS.

Para. 8, contd.
3rd Report,
Select Com-
mittee, 1831-32,
Questions 3924
to 3926.

In the permanent settlement by Lord Cornwallis, it was one of the essential points that the ryots should all have leases or pottabs; but it was considered to be impracticable, and the regulation has remained a dead letter. Pottabs were directed to be given, and some attempts were made to have the thing done; but it never was done, except partially, and in very few instances. Difficulties and objections were alleged; both the zemindars and the ryots disliked them.

VIII.—MR. T. FORTESCUE (*12th April 1832*).

Sess. 1831-32,
Vol. XI,
Question 2304.

Attempts have been made to force the zemindars to grant leases or pottabs, but they have not generally succeeded. The ryot as well as the zemindar has objections; the former have always opposed themselves to recognise any person in the character of proprietor, which they consider themselves to be: besides, by binding themselves by such a deed, they might be ruined by untoward events beyond their reach, although they do not object to pay the demand of Government.

IX.—MR. A. D. CAMPBELL (*1832*).

Ibid, App. 6,
page 15.

In merely prescribing the interchange of written engagements between the zemindars and the cultivators, the Government required the whole body of the latter to enter into engagements previously confined only to the lowest class amongst them, or to such as possessed no hereditary right of occupancy in the soil; and great repugnance to this arrangement has naturally been evinced by the hereditary or great mass of the cultivators under both the Presidencies. But when such engagements were required to be exchanged in Bengal, according to local rates and usages, which have been left undefined, without any measures being taken by Government for ascertaining or recording them, for the mutual guidance of both the hereditary payers and hereditary receivers of the land revenue, the enactment became a mere nullity.

X.—BENGAL BRITISH INDIA ASSOCIATION (*14th February 1859*).

Fifteen-sixteenths of the tenures in Bengal are at present held without the interchange of pottabs and kabuliuts.

9. Thus the safeguard of pottabs, in ignorant, credulous reliance on which the permanent settlement was concluded in hot haste, proved nugatory.

I.—LAW AND CONSTITUTION OF INDIA.

Page 166.

(a). Neither the zemindar nor the ryot is willing to grant or receive pottabs; the former, that he may exact the utmost; and the latter, that he may not be bound beyond what he may be able to perform; both

proceeding from the same cause, that want of good faith which is universal, and seemingly the legitimate offspring of the ill-defined situation in which the parties are unhappily placed.

(b). The inconsistency, however, of an enactment not to increase the rents of an estate with a declaration of a proprietary right, is obvious enough. But having bestowed the absolute property of the soil, absolute power over it naturally followed, if it did not accompany, the grant; and to attempt to control the effects of this by a legislative order, displayed in no small degree a want of knowledge of the science of government and of mankind, which the best of men are often most void of. Thus, with every desire to do good, did Lord Cornwallis humanely commit the most manifest injustice.

(c). An intelligent person, speaking of the zillah of Juanpore in 1819 on this subject, writes as follows: "The fact is, that though the settlement which Government made with the zemindars is unchangeable, and though these persons have no right to raise the rents upon tenants who live on the soil, or to oust them while they pay their rents regularly; and although there is, *at the very least*, one-third more land in cultivation now than at the time of the permanent settlement, the rent of land has risen *three-fold*, and no zemindar will accept of rent in kind (that is, half the produce) who can by any means, fair and unfair, get his rent in cash. The zemindar has various means of evading the right of the resident tenant to hold his land at a fixed rate, independent of his power, by the regulations, to oust on failure of regular payment of rent, of which they seldom fail to avail themselves. Should a zemindary be sold by Government for arrears of revenue, all leases become void (by the regulations); and a very improvable estate is frequently thrown in arrears to Government that it may be sold to void the leases, and purchased by the owner. Except for this purpose, from disputes among joint proprietors, and from intrigues in various departments, I believe estates are seldom sold.

"Now from three to four rupees are given per beegah for land to cultivate indigo; formerly, one rupee ten annas, to two rupees eight annas was the usual value. On an average, it may be fairly stated that, of the land held by resident tenants on lease, by Brahmins and Rajpoots, seven-tenths have risen from ten annas per beegah to one rupee eight annas, and of the lands held by the lower class of cultivators, half has risen from one rupee to two rupees eight annas, one-fourth from one rupee eight annas to four rupees, and one-fourth from two to five rupees. With such an inducement to oust the ancient tenants, it is not to be wondered at, though every landholder should exert himself to do so," &c.

APP. X.

SAFEGUARD OF
POTTAHS NUGA-
TONY.

Para. 9, contd.

APP. X.
—
SAFEGUARD OF
POTTABS NUGA-
TORY.
—

Para. 9, contd.

issue were a failure on the part of the *raeent* to cultivate in due proportion those crops which paid the highest rates to the malguzar, and the levy of the *abwabs*; but as such demands were unsanctioned by the then existing law, and could not consequently be enforced through its means, the consolidation of these items with the *ussul*, or legal prescriptive assessment, and the specification of the amount in the pottabs, was, in the opinion of the *raeents*, equivalent to an enhancement of the ancient rates, and their acceptance of such pottabs would have been an acquiescence in the right of the malguzars to levy further impositions, and to raise the rents at pleasure—a right which they were not prepared to admit, and the direct enforcement of which they would, in all probability, have resisted. As it was, for some time, optional with the ryots to accept or decline the new pottabs, they availed themselves of the latter alternative, in order to evade the concession of their privileges, which humiliation the Code demanded of them as the price of its protection.

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(b). The *raeents* opposed the pottah system, because they considered that by acceding to it, they would have become accessories to their own ruin; as in so doing they would record their concession of their allodial rights, whereas, under a contrary course, by declining to accept these leases they evaded the claims of the new proprietors to revenue; for (section 6, Regulation VIII, 1793) “they were not cognizable under the Code, unless a lease, and its counterpart, had been *interchanged*.” This was met by an enactment (section 5, Regulation IV, 1794) declaring “a public notification by the proprietor, that pottabs at the established rates were ready for delivery, to be a sufficient and legal tender to the *raeents*, authorising the former to receive from the latter, by process or distraint, or by action at law, the rents at the rates specified in the said pottah.” The *raeents*, from henceforward, were by the law degraded from the rank of actual proprietors to that of tenants on sufferance.

Page 102.

(c). It had been in the first instance declared that regulations for the protection and welfare of the *raeents* and other cultivators would be enacted; but none have ever been effectually passed, restoring them to any of their rights; even the single stipulation (VIII, 1793, cl. 2, section 60,—LI, 1795, section 10) most in their favour, which was intended to prevent the zemindars from raising the rents of khoodkasht ryots, was so worded that it gave every zemindar the means of enhancing his demands at pleasure; since, to entitle the *raeent* to the benefits of the provision set forth in the clause in question, it was necessary, in the first place, that he should have accepted a lease or pottah, and as in so doing he would have acknowledged a feudal over-lord in the person of the zemindar, he was naturally averse to become a party to the annihilation of his rights.

10. The uncertainty in which the authors of the permanent settlement were content to leave the liabilities of the ryot, ended in the destruction of his rights. This result was brought about, although Sir John Shore and Lord Cornwallis had distinctly laid down that the amount payable by the ryot should be recorded. The former observed (3rd Decem-

ber 1789, paragraph 19): "On the other hand, the necessity of prescribing regulations for simplifying the complicated rentals of the ryots (which ought, if possible, to be reduced to one sum for a given quantity of land, of a determinate quality and produce), of defining and establishing the rights of the ryots and talukdars with precision, together with the expediency of procuring clear data for the transfer by sale of public and private property, are admitted." Lord Cornwallis' determination that the amount of the ryots' rent should be clearly expressed, was even more explicitly stated (paragraph 6, section I of this Appendix). Even this provision for stating the amount payable by the resident cultivator, derogated from his rights, because they included his privilege of paying assessment on only the actual produce of the year, and his option of paying the established proportion of the produce in kind instead of in money. Still, a statement of the amount of the ryot's rent, even though it would have set aside this privilege and this option, would have afforded a substantial protection to the ryot; it would at least have secured him from an increase of his rent consequent on a rise of prices since 1793.

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OTHER MORE
EFFECTUAL
MEANS OF PRO-
TECTING THE
RYOTS WERE
NEGLECTED OR
DESTROYED BY
GOVERNMENT.

Para. 11.

11. The Court of Directors, in their Revenue letter to Bengal, dated 15th January 1819, paragraphs 44 to 46, summed up as follows:—

I. We are on this occasion naturally led to notice what is stated by you on the subject of the regulations passed in 1793 concerning pottahs, and of those subsequently enacted.

II. With respect to Regulation VIII of 1793, we have to observe that more seems to have been expected from its enactments in favour of the ryots than they were calculated to effect, unsupported by other institutions, and that it was in fact almost wholly nugatory. By section 2, Regulation XLIV of 1793, it was enacted that no lease should be granted for a period of more than 10 years, and that no lease should be renewed except in the last year of its term; and every lease granted in opposition to that prohibition was declared null and void. By another section of the same Regulation it was provided that whenever lands are sold by public sale for arrears of the public revenue, all engagements with under-farmers and ryots, as well as with dependent talukdars, should stand cancelled from the day of sale, the purchasers being left at liberty to collect from the talukdars, ryots, or cultivators, according to the rates and usages of the pergunnah (which rates and usages were left unascertained) as if the engagements so cancelled had never existed; and the operation of the foregoing rule was extended, by Regulation III of 1796, to the entire annulment of leases of lands, of which a part only might be sold for the recovery of arrears of revenue. The primary and, indeed, sole object of Regulation XLIV of 1793 evidently was to guard against a permanent diminution of the public revenue under the settlements that had been concluded

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Para. 11, contd.

with the zemindars, by which a permanent limitation had been set to the demands of Government upon them; and it was still further to guard against such a consequence that the modifications it underwent by Regulation III of 1796 were adopted. When we bear in mind the fact stated by Mr. Roche in his minute recorded on your Revenue Consultations of the 12th August 1815, that subsequently to the period of the permanent settlement "probably one-third, or rather one-half, of the landed property in the province of Bengal may have been transferred by public sale *on account of arrears of revenue*," we can readily perceive how prodigiously numerous must have been the instances in which engagements between zemindars and ryots were annulled.

III. The original Pottah Regulation (VIII of 1793) was also very materially defective, in making no sufficient provision for the ascertainment of the rights in which it professed to secure the ryots by their pottahs. It was of much more importance, for the security of the ryot, to establish what the legitimate rates of the pergunnah were, according to the customs of the country, or at all events to have ascertained the rates actually existing, and to have caused a record of them, in either case, to be carefully preserved, than merely to enjoin the exchange of engagements between them and the zemindars, leaving in total uncertainty the rules by which those engagements were to be formed. It is true that to have taken the rates at which the ryots were actually assessed by the zemindars, at the period of the permanent settlement, as the maximum of future demands, would have had the effect, as Mr. Shore observed in one of his minutes, of confirming subsisting abuses and oppressions; but it would, at least, have fixed a limit to them. The necessary information respecting these rates might, in a great measure, have been found in the registers of the canoongoes, had that office been maintained in its original state of efficiency. But the canoongoes' office had been most unfortunately abolished in the Lower Provinces when the permanent settlement was introduced, instead of being reformed and brought back to the purposes of its institution; and the putwarries, whose accounts were of the utmost importance in all cases of disputed claims between zemindars and their tenants, and between renters and ryots, having, at the same time, been virtually made the servants of the zemindars, naturally became averse to produce any documentary proof of exactions levied by their employers, and little credit was due to their accounts when produced. The consequence was, that the only safeguards left for the ryots were the pottah regulation and the courts of justice. That regulation must have been very inadequate to protect their interest against further encroachments, even had it been generally acted upon; but its originally imperfect construction, together with the modifications and restrictions which it afterwards underwent, indisposed the ryots to comply with its provisions; and the courts of justice could not avail much in cases of dispute where there were no data on which to decide, even if they had in other respects been competent to settle questions of that nature.

IV. But what appears to have had a more sensible operation in the depression of the ryots than perhaps any other cause, was the power vested by Regulation VII of 1799 in zemindars, talookdars, and other landholders and farmers of land, of distraining for rent.

V. The representations which were made by some of the most intelligent of the judicial and revenue functionaries, within a very few years after the passing of that regulation, and which were generally made in the course of 1809 and the two following years, of the enormous exactions and oppressions which were practised under the last mentioned Regulation, led, in 1812, to a revision of the existing rules respecting pottahs and other engagements between landholders and their tenants, as well as respecting distress and other summary modes allowed to the zemindars for enforcing payment of their demands; and Regulation V of 1812, which was subsequently explained by Regulation XVIII of that year, was passed for amending some of the rules then in force for the collection of the land revenue.

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OTHER MORE
EFFECTUAL
MEANS OF PRO-
TECTING THE
RYOTS WERE
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GOVERNMENT.

Para. 11, contd.

VI. Mr. Colebrooke, on whose suggestions Regulation V of 1812 appears chiefly to have been framed, after stating that "there is actually no sufficient evidence of the rates and usages of pergunnahs which can now be appealed to for the decision of the questions between landholder and ryot," and consequently no definite rules for the guidance of courts of justice, expressed himself in the following terms:—

(a). "In this state of matters, it would be better to abrogate most of the laws in favour of the ryot, and leave him for a certain period, to be specified, under no other protection for his tenure than the specific terms of the lease which he may then hold, than to uphold the illusory expectation of protection under laws which are nearly ineffectual.

(b). "The parties would be thus compelled to come to an understanding, and the result would on every consideration be preferable to the present state of uncertainty, which naturally leads to oppression, fraud, and endless litigation." It was avowedly with much reluctance that Mr. Colebrooke suggested the adoption of this alternative, for he immediately added: "If it be thought expedient, in place of abrogating the laws which were enacted for the protection of the tenantry, and especially of the khoodkasht ryot, or resident cultivator, that the right of occupancy which these laws were intended to uphold, should be still maintained, and that the ryot should be supported in his ancient and undoubted privilege of retaining the ground occupied by him so long as he pays the rent justly demandable from it, measures should be adopted, late as it now is, to reduce to writing a clear declaration and distinct record of the usages and rates according to which the ryots of each pergunnah or district will be entitled to demand the renewal of their pottahs, upon any occasion of general or partial cancelling of leases."

(c). He added: "I had it at one time under consideration to propose a plan for the preparation of such records, under the superintendence of the revenue officers, assisted by the canoongoe office, to be re-established for that and for other purposes, and in communication and concert with the zemindars and principal ryots of each pergunnah, and I had made a considerable progress towards maturing the plan of this great undertaking, but after much consultation with the Acting President of the Board of Revenue (Mr. Crisp), and with other experienced and well informed officers of the Revenue Department, I have been diverted from this project by the apprehension that the intelligence and activity requisite for the due superintendence of its execution within each zillah are not to

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be universally and generally expected, and that if it were ill-performed, it might, not improbably add to the subsisting evils instead of remedying them."

VII. The same considerations which had induced Mr. Colebrooke to abandon the measure alluded to in the passage last quoted (which measure, nevertheless, he afterwards, as appears from his minute of the 30th April 1815, felt the great expediency of pursuing), probably influenced the decision of the late Government, and Regulation V of 1812 was framed in consonance with Mr. Colebrooke's first suggestion.

VIII. It had been urged, at the time of passing that regulation, that although the rights of the cultivating classes had been most materially violated, yet as the zemindars and the ryots had reciprocal wants, their mutual necessities must drive them to an amicable adjustment. Upon this doctrine it is well observed by Lord Hastings that "this reciprocity is not, however, so clear," &c. &c.¹

IX. It always appeared to us that the provisions of Regulation V of 1812 would operate as a very imperfect correction of the evils which it was intended to remedy, and this we expressed in our despatches of 28th October and 9th November 1814 and 6th January 1815. Subsequent information has not only confirmed us in the opinions which we from the first entertained, but has satisfied us that, in practice, the regulation has been the very reverse of beneficial. In Mr. Sisson's letter of the 2nd April 1815, to which we have already referred, it is stated to have produced the *most injurious consequences*. The zemindars of Rungpore are represented by him as *perverting its provisions to the entailment in perpetuity upon their wretched victims, the peasantry* (by which he means actual occupants of the land), *of a long series of exactions*, of which he gives some most striking specimens. Section 2, Regulation XVIII of 1812, runs thus: "Doubts having arisen on the construction of section 2, Regulation XVIII of 1812, it is hereby explained, that the true intent of the said section was to declare proprietors of land *competent* to grant leases for any period, even to perpetuity, and at any rent which they might deem conducive to their interests," &c. This provision has been construed to give to zemindars the power of demanding from the ryots *any rent* they might think proper, without regard to the customary rates of assessment in the pergunnah. The inference seems unavoidable that the persons with whom the permanent settlement was made, and those who, by inheritance or purchase, may succeed them, are authorised by the existing law to oust even the hereditary ryots from possession of their lands, when the latter refuse to accede to any terms of rent which may be demanded of them, however exorbitant.

X. In the consideration of this subject it is impossible for us not to remark that consequences the most injurious to the rights and interests of individuals, have arisen from describing those with whom the permanent settlement was concluded as the *actual proprietors of the land*. This mistake (for such it is now admitted to have been), and the habit which has grown out of it, of considering the payments of the ryots as rent instead of revenue, have produced all the evils that might be expected to flow from them. They have introduced much confusion into the whole subject of landed tenures, and have given a specious colour to the pretensions of the zemindars, in acting towards persons of the other classes

¹ See the passage as quoted in paragraph 6, section I.

as if they, the zemindars, really were, in the ordinary sense of the words, the proprietors of the land, and as if the ryots had no permanent interest but what they derived from them.

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12. The review was continued as follows:—

I.—BENGAL GOVERNMENT'S REVENUE LETTER (*1st August 1822*).

(a). We have derived much satisfaction from the full explanation which you have afforded us in these paragraphs of the sentiments entertained by you on the important subject of the adjustment of the rates of rent payable by the ryots. In general, those sentiments concur entirely in the views by which we have ourselves been guided. As to the partial operation of the laws applicable to the Lower Provinces, it must, we imagine, be generally admitted that they have been unfavourable to the interests of the inferior classes of the tenantry. But it is, nevertheless, important to observe that the uniform design of the Legislature has been very different, and that there is nothing in the laws, when duly considered, calculated in the slightest degree to bar the Government from the adoption of such measures as it may see fit to adopt, with the view of securing the ryots.

(b). [Here followed a paragraph respecting the right of Government, even in 1822, to order a settlement for the adjudication and record of ryots' rights, which rights, by a custom more ancient than law, limited the rights of Government. The paragraph is quoted in Appendix IV, para. 10, section IV a.]

(c). We freely, indeed, admit that, even though the ryots of Bengal had possessed no right of holding their lands at determinate rates, considered in their relation to the sovereign, it was unquestionably competent to the Government, in fixing its own demands, to fix also the rates at which the malguzar was to make his collections; and it was, we think, clearly intended to render perpetual the rates existing at the time of the perpetual settlement. The intention being declared, the rule is of course obligatory on the zemindars. * *

(d). We are not insensible to the disadvantages of fixing rates, though the perpetual adjustment of them might still of course leave rents to vary; but our conviction certainly is, that the custom of the country gives to the ryots rights limiting the right of Government, and that the rights so possessed could not be set aside by the supreme authority without the imputation of injustice. * *

II.—REVENUE LETTER TO BENGAL—*10th November 1824* (COURT'S REPLY TO PRECEDING).

(a). You consider that there is nothing in the law, that is, in any rights which you may have exerted in favour of the zemindars, "to bar the Government from such measures as it may see fit to adopt with the view of securing the ryots." * *

(b). It is in the highest degree important that your design of adjusting the rights and interests of the ryots in the villages, as perfectly in the

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Lower as in the Upper Provinces, should be carried into effect. The doubts which we have expressed with respect to the sufficiency of the collector's agency will receive from you a due degree of attention. * * Should you succeed in securing to the ryots those rights which it was assuredly the intention of the permanent settlement arrangements to preserve and maintain; and should you, in all cases where the nature and extent of those rights cannot now be satisfactorily ascertained and fixed, provide such a limit to the demand upon the ryots as fully to leave them the cultivators' profits, under leases of considerable length, we should hope the interests of that great body of the agricultural community may be satisfactorily secured.

13. It appears from this appendix that—

I. In 1769 the Bengal Government made an earnest appeal to the ryot to confide in his Collector, who would stand between him and the hand of oppression, be his refuge and the redresser of his wrongs, secure him from further invasions of his property, and teach him a veneration and affection for the humane maxims of the Government.

II. Later, the Government, at various times, repeated assurances like the following:—

(a). The welfare of the ryot ought to be the immediate and primary care of Government (*Warren Hastings, 1776*).

(b). Under the permanent settlement, the great body of the ryots were to be secured the same equity and certainty as to the amount of their rents, and the same undisturbed enjoyment of the fruits of their industry, as were to be given by that settlement to the zemindars (*Sir John Shore*).

(c). The ryots had vested rights in the land, and the annulment of those rights would be the most extensive act of confiscation that ever was perpetrated in any country. "So long as the rights of the inferior classes of the agricultural population shall remain unprotected, the British Government must be considered to have fulfilled very imperfectly the obligations which it owes to its subjects" (*Court of Directors, 9th May 1821*).

(d). The State's share of the produce, out of which was provided the zemindar's, was fixed by a custom more ancient than law, and all the rest of the produce belongs to the ryot. "The faith of the State is to the full as solemnly pledged to uphold the cultivator of the soil in the unmolested enjoyment of his long-established rights, as it is to maintain the zemindar in the possession of his estate, or to abstain from increasing the public revenue permanently assessed upon him" (*Court of Directors, 15th January 1819*).

(e). Protection of the ryots in their rights, and security from arbitrary exactions, formed, in principle at least, a part

of the permanent settlement, and they are "the foundation, as it were, on which your revenue and judicial system professed to be built" (*Court of Directors, 9th May 1821*).

III. With these convictions of the Government's obligations and duty towards the ryots, the Court of Directors reserved their right as sovereigns to intervene from time to time, as may be necessary, for saving the ryot from exactions, and from being dispossessed of the land he occupied.

IV. But these professions and convictions of the Government were unavailing, because the Government declared a policy of non-intervention, in pursuing which it destroyed some effectual means of protecting the ryots, and in conceiving which it relied in credulity and ignorance, on the efficacy of pottahs which it was persuaded that the zemindars would grant, and which, indeed, the Government soon persuaded itself that the zemindars had granted, to the ryots, whereas, the zemindars turned their obligation to grant pottahs into an engine of oppression, while the ryots refused pottahs as the instrument of their subjection, in bondage, to zemindars.

V. As a natural consequence, the ryot's rights were destroyed; they passed away *sub silentio*; and, then, the Court of Directors, in viewing the wreck, recorded (as if exclaiming "Alas! poor Yorick!") that the ryots, and not the zemindars, were the *actual proprietors of the land*; the Court passed no orders upon a suggestion by Mr. Colebrooke in 1815, that even at that late hour, "measures should be taken for the re-establishment of fixed rates, as nearly conformable to the anciently established ones as may be yet practicable, to regulate distinctly and definitely the relative rights of the landlord and tenantry." But later, in 1824, they approved of one of the numerous infructuous good intentions which Governments of former days devoted to the ryots in return for a confiscation of their proprietary rights, *viz.*, that by a detailed survey and settlement, similar to that in the North-Western Provinces, the rights of ryots should be recorded, and their rates of assessment permanently fixed. Had that order been carried out, ryots' rents would have been permanently settled before the great rise of prices which has issued in constant enhancements of rent.

VI. It was intended that, as a part of the permanent settlement, the pottahs which the zemindars were to give to the "great body of the ryots" should show "in one sum, for a given quantity of land, of determinate quality and produce,"

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APP. X. the amount which each ryot was to pay, “and that no ryot
SUMMARY. shall be liable to pay more than the sum actually specified
Para. 13, contd. in his pottah.” This was tantamount to fixing a permanent
assessment for each ryot, which was not liable to be increased
from any subsequent rise of prices; and hence it may be
assumed, even did pottahs not exist, that the rates of rent in
the present day, for the class of ryots whom pottahs should
have protected, ought to be fixed irrespective of the great
rise of prices since 1848.

APPENDIX XI.

ZEMINDARS AND RYOTS FROM 1793 TO 1859.

1. Evidence of the failure of the permanent settlement in one of its principal objects, *viz.*, the protection and security of cultivators, has been set forth in Appendix IV under the two divisions of the oppressive rule of the old race of zemindars down to 1858, and of the consequent wretched condition of the ryots. The exactions and oppressions by the earlier zemindars have been noticed more minutely in Appendix VII, and the destruction of ryots' rights in Appendix X. Further detail will now be supplied of the ways in which the ryot's right was destroyed. The highest authorities declared that right to be the greatest right in the country, and its preservation to be the bounden duty and paramount obligation of Government, if the zemindary settlement, which was to redound to the glory and honour of England, was not to be branded as an unparalleled confiscation of the rights of millions of proprietors.

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2. The history of that settlement is a sad record of the confusion and discord between right, law, and fact;—of the confusion between right and law, from the almost exclusive concern of the latter for the Government's right to revenue, and its too general forgetfulness of the ryot's right to the soil, and (where right and law harmonised) of the discord between them and fact; the zemindars of past generations, and many of them to this day, turning into fresh instruments of oppression laws which from time to time have been designed for the protection of the ryots.

3. It is a strange spectacle!—the most law-abiding people on the earth are the British conquerors of India. The greatest contemners of the law, and deriders of its equities, have been a comparatively few, and, among them, mostly half-educated men belonging to the subject race, in a province which for centuries has accepted foreign domination, and which, were English rule to be withdrawn, would accept some other, as it accepted the Mahomedan before the British rule. As yet, the zemindary settlement has only pointed this curious satire on national independence; where a few, and those not generally the worthiest of the conquered, bend to their

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4. As in the discussions before 1793, relating to the permanent settlement, and in the Regulations of that year, so in the subsequent correspondence between the Court of Directors and the authorities in Bengal, the literature of those legislators and administrators is replete with admirable sentiments of justice, veneration of right, philanthropy, benevolence, and mercy to the poor. These, however, furnished only the embellishments of the history of the zemindary settlement from 1793 to 1857; the actual history was made, and its repulsive facts were supplied, by the lawlessness of zemindars, who corrupted and controlled the police, corrupted the underlings in civil and criminal courts, in days when, judges being few, evidence was recorded, not by the presiding officer, but by mohurirs in corners of a crowded court-room, and in a country where the suitor needs, or needed, to bestow on the execution of a decree as much anxiety and careful watching as during the progress of his suit.

5. The history is exciting, with its incidents of crime, dacoity, violence, forgery, and perjury; but its tragedy is revolting, for those incidents brought ryots into predial bondage to zemindars; and ryots could not help themselves when required, at the zemindar's bidding, to pay enhanced rents, with or without agreement, and, so, to destroy their ancient rights, even if by a miracle they had preserved proofs of those rights. After sixty years of this disorder,—this tyranny of might over right,—Act X of 1859 laid down rules for the enhancement of rent, as if that period had been one of peaceful calm in which the zemindars had abstained from increasing rents, except in accordance with established custom, and as if the ryots had carefully preserved documentary proofs of privileges, and been free to refuse more than the customary rents.

6. Custom and law may have been ever so clear about the ryot's right, but their testimony was useless so long as a weak, corrupt police could not prevent his ejectment from his land by a powerful zemindar. This power of the zemindar would deter the ryot from even the semblance of resistance, and make him sign anything, agree to anything. If the police was known to be in the zemindar's pay; if dacoits were harboured or protected by him; if the village chowkidars, who were known to be dacoits, were

those who collected the zemindar's rents ; if the zemindar kept bands of clubmen ; and if violent or fraudulent evictions of some ryots, with destruction of their property, and with worse treatment of them, were practised with impunity, the thousands of other ryots who witnessed these things, and who felt the hopelessness of kicking against the pricks, were, perforce, cowed into subjection. We may give precedence, therefore, to evidence respecting the state of the police.

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7.—POLICE.

I.—MINUTE OF THE GOVERNOR-GENERAL, *7th December 1792.*

(a). With respect to the landholders, some of the principal of them in Bengal (the zemindars of Burdwan, Nuddea, and others) have been allowed considerable deductions in the adjustments of their jumma for the maintenance of thannadars and pykes, for the express purpose of enabling them to perform the condition of keeping the peace, annexed to their tenures. This condition may appear, at first sight, to promise general security ; but experience has proved the fallacy of delegating to individuals one of the most important duties of Government.

(b). Of the zemindars who have been allowed the above-mentioned deductions, some keep up no establishments whatever, whilst others, instead of entertaining creditable persons, and allowing them an adequate salary, dispose of the employments for pecuniary considerations. As the offices afford no source of emolument but such as are derived from the most iniquitous practices, it can answer to none but professed robbers to purchase them ; most of the thannadars appointed by the zemindars are, accordingly, persons of this description. The annexed proceedings of the late Acting Magistrate of Burdwan (the principal zemindary in Bengal) will show that the police appointments were sold by the zemindars' officers to the most notorious robbers, who plundered the country which it was their duty to protect. The same abuses prevail, in a greater or less degree, in every zemindary the proprietor of which is allowed to keep up a similar establishment.

(c). In some parts of the country, particularly in the eastern and the southern districts of Bengal, many of the petty landholders, encouraged by the great distance of the magistrate's place of residence, and by there being no officers stationed on the spot, on the part of Government, for the protection of the country, have, from time immemorial, been in the habit of perpetrating robberies themselves, or conniving at them in others. It is, indeed, notorious that most of the principal gangs of robbers are in league with some of the zemindars, and generally with those in whose districts they leave their families and deposit their plunder.

(d). To exonerate the zemindars from all responsibility would be improper. The condition annexed to their tenure may be converted to the most beneficial purposes in aid of an established police, by limiting the operation of it to cases in which they may be proved to have connived

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II.—GOVERNOR-GENERAL, TO GOVERNOR IN COUNCIL, MADRAS—*31st December 1799 (respecting a permanent zemindary settlement of the Madras Presidency).*

(a). Independent of these important considerations, to abandon the charge of the police of the country to the landholders must always give rise to the most flagrant abuses. In the inquiries which preceded the resumption of this charge from the landholders in Bengal, it was established that the offices of police were held chiefly by the most notorious robbers, who paid large sums of money to the zemindars or to their officers and dependants for these situations, the possession of which enabled them to carry on their depredations with impunity.

(b). The arrangement suggested will not prevent your Lordship in Council from deriving every assistance from the landholders in maintaining the peace of the country, in their individual capacity of proprietors of estates; on the contrary, a clause should be inserted in their engagements, binding them to convey to the magistrates or to their officers the earliest information of every circumstance affecting the good order of the country; and they should be subjected to punishment, extending in certain cases of enormity to the forfeiture of their estates, if it should appear that they had connived at robberies, or protected robbers or other disturbers of the public peace.

(c). The magistrates, and the officers acting under them, should possess the most absolute control over all the village watchmen of every description. At the same time, these village watchmen should be carefully secured in the lands, fees, and allowances of which they are stated, in the 57th paragraph of the Report of the Board of Revenue, to be in the enjoyment, so as to render their services efficient to the original purposes of their institution.

III.—MR. W. B. BAYLEY, *Secretary to the Government of Bengal (16th April 1832).*

Parl Papers,
Sess. 1831-32,
Vol. 12.

(a). The police jurisdictions under darogahs were originally intended to include spaces of about 20 square miles, but they are of greater or less extent, as circumstances require. There are from 15 to 20 thannas or darogahs' stations in a zillah, the total number being in the Lower Provinces near 500, and in the western near 400. At each station under the darogah are a mohurir, or writer, and a jemadar, with from 20 to 50 burkundazes, peons, or irregular soldiers.

(b). It is not to be understood that the whole business of the police is performed by these establishments. The zemindars or their agents, or other local officers under them, are required to give immediate information at principal police stations of all crimes committed within their limits; and the duty of tracing and apprehending criminals is chiefly performed by the village officers or servants, under the occasional direction or supervision of some person from the thanna.

(c). The darogahs report their proceedings regularly to the magistrate, and receive orders from him. Their principal duties are to receive criminal charges, to hold inquests, to forward accused persons, with their prosecutors and witnesses, to the magistrate, and, generally, to perform such acts as the regulations prescribe with a view to the discovery, apprehension, and ultimate trial of offenders.

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These extracts show that the poorly-paid darogahs were sufficiently few to be kept in the secret pay of zemindars; also that their duty was not to stir until crime was reported to them; and that the duty of reporting crime appertained to the village chowkidars, who collected revenue for zemindars. The following extracts from the report of the Police Committee¹ of 1837 show the character of the village police and of police darogahs:—

IV. (a). We now come to the most important subject connected with the police of Bengal, namely, the state of the chowkidari establishments. In some districts, their numerical strength appears to be very great; yet they are utterly inefficient, and have been described in the most unfavourable terms. Mr. W. T. Holborn, Judge of Zillah Cuttack, in his letter already referred to, observes: "That, from the total absence of any supervision over the village police for a series of years, it may be said that at present such a body does not exist. The race of people denominated chowkidars retain the name, apparently to blind the people as to their real character. They are employed during the day to assist the zemindar in collecting his rents, and at night they act as the agents of notorious characters, to point out where property is to be found! This is easily accounted for. The office is held by the very lowest caste of natives, and they are allowed by the zemindars to realise what they can from the villagers for their maintenance. They have, in a measure, held us at defiance heretofore. If a chowkidar be accidentally detected at conniving at any offence, and the magistrate orders his dismissal, directing the darogah, through the zemindar, to appoint another in his stead, his son or his nephew's name is handed up for approval, and, in ignorance, he is appointed. The chowkidars in Bengal and Behar are, for the most part, of the following castes:—Harrees, Bagdhees, Banees, Dusads, and Domes. In Orissa Pans, Kindeahs, and Mehters. These castes are deemed so inferior, that they are employed as scavengers, and in such like degrading offices. No Hindu native of a higher caste would even touch them: to do so, or to take anything from them, is held to be forfeiture of caste. They seldom realise by honest means above one or two rupees per mensem at the utmost, and are, therefore, always ready to connive at offences, on the promise of getting a share of the stolen property. It is not an uncommon trick amongst the chowkidars to apply for leave of absence before a burglary or a dacoity takes place, to quiet suspicion against them, after having informed where property is to be found, and the time and manner in which the theft can be accomplished with the least chance of detection to the parties concerned."

¹ Comprised of Messrs. W. W. Bird, W. Braddon, F. C. Smith, J. R. Herschell, J. Lowie, F. J. Halliday, D. C. Smyth, and T. C. Scott.

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(b). Mr. W. A. Pringle, in his letter dated the 7th February 1837, gives similar testimony: "At present the village watchmen are badly and irregularly paid; and though nominally under one master only, the darogah, they are bullied and oppressed by almost every man in the village. The zemindars and farmers, and their amlah, too often employ them in collecting rent and in oppressing the ryots." * *

(c). Mr. T. R. Davidson, also, in his letter dated the 10th June 1837, remarks: "At the lowest computation, this branch of the police (chowkidars) in the four districts Sarun, Shahabad, Patna, and Behar, exceeds 15,000 men; yet it is so utterly worthless, that I am not sure the country would be in a worse position in point of police were every chowkidar dismissed. They comprise the most debased class of the inhabitants, and are, I fear, usually, rather engaged in robbery and theft, than in guarding the property of their employers. In the district of Sarun they are said to be the leaders of gangs; and they are notoriously the medium by which stolen property is restored throughout the division." * *

(d). The papers submitted for our consideration abound with evidence to the same effect; but the above will be sufficient to show that nothing can be in a worse state than these establishments, and that the most urgent necessity exists for a thorough revision, not in one or two districts merely, but throughout the country, in order to place them in a state of efficiency. In some districts the allowances for watchmen are very great. In Purneah, for instance, they are stated by Mr. Pringle to amount to no less than sicca Rs. 1,96,132 per annum—a sum which, at the rate of 4 rupees per mensem, would admit, under a well-regulated system, of the employment for that district alone of 4,000 men; and yet the establishment is described, not only as utterly useless for police purposes, but as a curse, instead of a blessing, to the community. It is the same almost everywhere else; and it is even a question whether an order issued throughout the country to apprehend and confine them would not do more to put a stop to theft and robbery, than any other measure that could be adopted. * *

(e). The magistrates are overwhelmed; the darogahs and their subordinate officers are corrupt; the village watchmen are poor, degraded, and often worse than useless; and the community at large, oppressed and inconvenienced in various ways, are not only disinclined to afford aid to the police, but, in most cases, had rather submit quietly to be robbed, than apply to the police officers for assistance to apprehend the thieves, or recover the stolen property.

(f). The defect which we have next to bring to notice is one that has been already referred to, namely, the corruption and utter worthlessness of the thannadars. All concur in thinking that this class of functionaries are on the worst possible footing, and that it would be better to dispense with them altogether, unless inducements can be held out sufficiently strong, to dispose persons of character and respectability to offer themselves for the appointment. In proof of what is above stated, we beg leave to refer to the evidence given before us by Babu Dwarkanath Tagore, on the 8th November last, from which the following is an extract:—

"Q. 263.—You had, then, many opportunities of observing the condition of the police; state what you think of it? I think that, from the

darogah to the lowest peon, the whole of them are a corrupt set of people—a single case could not be got out of their hands without paying money: the wealthy always get advantage over the poor. In quarrels between the zemindars and indigo-planters, large sums are expended to bribe these people. When any report is called for by the magistrate from the darogahs, even in a true case, that report could not be obtained without paying a large sum of money; and should the case be between two rich parties, the richest, or he who pays the highest, would get the report in his favour. If a jemadar or peon is sent to a village for any inquiry, there is immediately a tax levied by them from all the ryots of the village, through the gomashita of the zemindar; and this mode of extortion has so long prevailed as almost to give it the character of a just demand—so much so, that not a single ryot would even make an objection to pay it. Indeed, they look upon it as an authorised tax. If a dacoity takes place in any neighbourhood, the darogah and all his people will go about the villages and indiscriminately seize the inhabitants, innocent or culpable; and it often happens that persons so taken, although of the most suspicious character, in the particular transaction are released on some money inducement being given to the officers. * * In short, nothing can be done without paying for it whenever they are called upon to interfere.”

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Para. 7, contd.

V.—MINISTERS AND MISSIONARIES RESIDENT IN CALCUTTA (1852-53).

(a). Your petitioners greatly fear that it will be found on enquiry that in many districts of Bengal neither life nor property is secure; that gang-robberies of the most daring character are perpetrated annually in great numbers with impunity; and that there are constant scenes of violence in contentions respecting disputed boundaries between the owners of landed estates.

Sess. 1852-53,
Vol 27,
App. 7.

(b). The radical cause of both these evils is the inefficiency of the police and the judicial system. Your petitioners find that the sole protection of the public peace in many places is a body of policemen (called village chowkidars), who are, in fact, the ministers of the most powerful of their neighbours, rather than the protectors of the people. The body of peace officers appointed and paid directly by the State will, on inquiry, be found to be entirely insufficient for the great districts for which they are provided; but, few as they are, they will be found to be the oppressors of the people. The records of the criminal courts, and the experience of every resident in the districts of Bengal, will bear testimony to the fact that no confidence can be placed in the police force (either the regular force or the village chowkidars); that it is their practice to extort confessions by torture; and that, while they are powerless to resist the gangs of organised burglars or dacoits, they are corrupt enough to connive at their atrocities.

(c.) Your petitioners believe that a strict and searching inquiry into the state of the rural population of Bengal, would lead your Hon'ble House to the conclusion that they commonly live in a state of poverty and wretchedness, produced chiefly by the present system of landed tenures, and the extortion of the zemindars, aggravated by the inefficiency and the cruelties of the peace officers, who are paid by the chowkidari tax or by the Government.

APP. XI. VI.—MR. W. THEOBALD, MR. THEODORE DICKENS, AND BRITISH AND
OTHER INHABITANTS OF CALCUTTA AND THE NEIGHBOURING PARTS
IN LOWER BENGAL, 1852.

A WAZI,
CORRUPT
POLICE.

Para. 7, contd.

(a). The police of the Lower Provinces totally fails as respects its proper purposes—the prevention of crime, apprehension of offenders, and protection of life and property; and it is become an engine of oppression and a great cause of the corruption of the people. Your petitioners desire to state a few facts in connexion with these propositions. The Lower Provinces, concerning whose police your petitioners are now speaking, are divided into 32 counties (zillahs), and contain an estimated population of 30 millions, and compose an area larger than France. The proper police force in these counties consists of superintendents (darogahs), sergeants (jemadars), and constables (burkundazes), amounting, on the whole, to 10,000¹ or 11,000 persons; and to these have to be added the village watchmen, who are paid by the villagers, and not by the Government, and are so rarely known to prevent a theft or other crime, or to apprehend the criminal, that they must count for very little in an honest appreciation of the general system. These numbers are insufficient with reference to the existing state of the population; and in the present state of crime, an exclusively native police, however numerous, can hardly be made sufficient.

(b). Effective superintendence over the native police there is, and can be, none under the existing institutions, owing to the paucity of magistrates, their heavy judicial duties, which being alone sufficient to occupy their time, are incompatible with the activity and locomotion required for superintendence, and the large size of districts, the zillah being perhaps as large as Yorkshire, or an area of 6,000 or 7,000 square miles, and containing a population of one million, with one magistrate, an “assistant” or pupil of the civil service, and a deputy magistrate for the whole zillah.

(c). Your petitioners will make a brief statement in illustration of the practical bearing of the existing system on the condition of the people. In case of the apprehension of an offender, and in order to prosecute him, it is necessary for the injured party and his witnesses to go before the magistrate; but this may be a journey of from 15 or less, to 50 miles or more, in consequence of the extent of his district; and, when arrived at the magistrate's office, he may be detained days or weeks, from a variety of causes. In fact, a magistrate's compound in the Lower Provinces often presents the spectacle of hundreds of persons thus kept in detention for weeks; and if the offence is of a gross character, or beyond the jurisdiction of a magistrate, he and his witnesses may be required to take a second journey of the same distance to the sessions, and be there detained for days or weeks waiting for a trial. At the sessions, also, hundreds of persons are constantly detained, at great distances from their homes. To avoid these inconveniences, the population render little or no aid to the police for the enforcement of the law, but on the contrary they are generally averse to do so; and hence has

¹ Corroborated by Mr. Marshman's evidence, Q. 3590.

arisen a practice which is a great reproach to the police system, namely, that witnesses generally, and prosecutors often, are made prisoners, kept under arrest, and sent to the magistrate, and afterwards to the sessions, in actual custody. From this state of the law and the police result the following, among other evils: persons robbed deny the fact of a robbery; or if they complain, the persons who could be witnesses deny all knowledge of it, the immediate interests of these classes being arrayed, by reason of the state of the law and jurisdictions, against the objects of law and justice. Often under these circumstances the native policeman, to do his duty, employs the means of terror; and torture is believed to be extensively practised on persons under accusation, and the injured party for not assisting him becomes an offender. All the evil passions are thus brought into play, and ingenuities of all kinds, both by people and police, are resorted to. Another result is the constant device of proving a true case by witnesses who know nothing about the matter. Justice is supposed to be thus satisfied; but convenient perjury becomes familiar, and perjury loses its criminal character among the people. Thus, and in a thousand other ways, the law and police operate to corrupt the people, and spread corruption; moreover, the very circumstances which repel the honest, attract those who have revenge to gratify, rivals to injure, enemies to destroy; and for these and other dishonest purposes the police and criminal courts are resorted to, and police and law under the present system are terrible evils.

(d). A further aggravation of evil results from some powers possessed by the native police, which, practically, are magisterial—such as the power of receiving confessions, and in all cases of taking (though not on oath) the deposition of witnesses, which powers are exercised by the sergeant (jemadar), in the absence of his immediate superior (the darogah); and thereby, practically, the course of criminal justice takes its direction from them, and thus the police control the magistrate's functions, instead of his superintending and controlling the police. * *

(e). The legislation respecting crime is equally unsatisfactory. By reason of the state of the police, every landholder, planter, banker, considerable trader, and storekeeper, is obliged to keep men, often in very considerable numbers, armed according to the custom of the country, to defend his property against midnight-gangs, called dacoits, and other robbers. Such irregular forces, though necessary for self-protection, are of course liable to be employed by neighbours at enmity against one another, and by circumstances to become aggressive; and hence the frequency of affrays, which are to be deplored. But the primary evil, in the whole set of circumstances, is the state of the police; and its reform is the proper and essential remedy. Instead of which, mere¹ legislation against crime is resorted to; ingenuities are exerted to bring the propertied classes within the criminal categories; the laws on paper are made more severe; increased judiciary powers are given to the magistracy;—but the real evil remains unabated. It is obvious that legislation of this kind is only acceleration on the road to ruin.

APP. XI.

A WRAK,
CORRUPT
POLICE.

Para. 7, contd.

¹ Just in the same way as the Government in 1793 were content to secure the ryots by legislating about pottahs.

APP. XI. VII.—BENGAL BRITISH INDIAN ASSOCIATION AND OTHER NATIVE INHABITANTS OF THE BENGAL PRESIDENCY.

INEFFICIENT
POLICE.

Para. 7, contd.

Sess. 1852-53,
Vol. 27, App. 7.

(a). The Association thank the British Government for having ensured to them freedom from foreign incursions and intestinedissen sions, and (speaking doubtless on behalf of the ryots) security from spoliation by lawless power.

(b). The Company's courts are not so constituted as to render substantial justice to the natives, or afford them a just confidence as to security of life and property.

(c). The police of the country has always been in a state not at all creditable to an enlightened Government, and has, indeed, been acknowledged by the servants of Government to be "as bad as it can be." The Court of Directors have, it is true, expressed themselves solicitous of the improvement of the police at any cost; but their solicitude has been without any effect. The Government, on appointing a Police Committee in 1837 to hold inquiries on the subject, strictly prohibited the suggestion of any reforms which should involve any great increase of expenditure. From that day to this no reforms have been attempted beyond the appointment of a few deputy magistrates, and, very recently, of a commissioner for the suppression of dacoity, who has not yet entered upon the duties of his office. Hence, the utmost insecurity of life and property prevails in every district, and even in the immediate vicinity of the metropolis of British India.

(d). The insufficiency of the police arises, not only from the small establishments maintained by the Government, but from the extensive jurisdiction of the magistrates, and the practice of appointing very young men to that office, and removing them to higher posts as soon as they begin to acquire experience. The extent of country which is to be travelled over to arrive at the station of the magistrate, the difficulty of obtaining access to that functionary, except through the medium of the ministerial officers, the necessity of presenting every petition in writing, and on stamped paper of the value of half a rupee (about four times the value of a labourer's daily wages), combine to render it a matter of impossibility to the poorer classes to obtain justice from the criminal courts. The large powers vested in the darogahs are liable to abuse, owing to the insufficient remuneration they receive, and the difficulty of exercising proper control over them. Their entrances into villages to trace out the perpetrators of heinous offences, or discover property alleged to be stolen, are regarded by the people as visitations. The fact is so notorious, that the Government have found it necessary to pass a law, Regulation II of 1832, to prevent the darogahs from investigating any cases of burglary, unless expressly desired by the party injured, or directed by the magistrate. Hence, it is difficult adequately to represent to your Hon'ble House the actual situation of the poor in the interior, in consequence of the badness of the police system, since those who are most exposed to the attacks of the powerful and the lawless have most to dread the exactions of the officers of the police, many of whom are actually in the pay of the rich, while some have been convicted of practising torture to obtain their ends.

Zemindar's
opportunity of
securing these
offices against
the ryots.

Zemindar's
opportunity.

(e). To remedy such a state of things, it is urgently required that a suitable augmentation of the police be made for the repression of dacoity and other crimes attended with violence, as well as that a sufficient number of magisterial officers, unencumbered with extraneous duties, be attached to every district.

APP. XI.

INEFFICIENT
POLICE.

Para. 7, contd.

VIII.—SIR FREDERICK HALLIDAY (*14th March 1853*).

Q. 1896.—Here, again, I must limit my answer by saying that I speak with reference to the police in the Lower Provinces of Bengal, with which I am more familiar than any other. I cannot give it a good character; at the same time I must say that, in the hands of a good magistrate, even now the police are capable of being made more efficient, and that they are more efficient than you would suppose to be the case, judging from the complaints to which allusion has been made. Much of the fault attributed to it, and the want of success which has been complained of, is almost insuperable, in consequence of the character of the people with whom you have to deal. You have a cowardly and untruthful people, not in the smallest degree disposed to aid the police, but rather the contrary; you have persons of power and influence, connected with the land, who, so far from assisting you, are charged by their countrymen with assisting thieves and robbers, and participating in their spoil; you have, at the very foundation of the police, a system—a thoroughly ill-paid and demoralised set of village watchmen, with respect to whom the zemindars resist most strongly any attempt made to put them upon a better footing, because it will cause them, they think, additional expense; and you have to work through native agents, and through a class generally whom you cannot afford to pay sufficiently, and who, therefore, are exceedingly untrustworthy; you had a system which, in fact, was rotten when you found it, and which will take many years to put into a proper state; at the same time I am far from saying that much might not be done, and far from hoping that much will not be done.

Sess. 1852-53,
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Q. 1906.—Do you believe that the class of men by whom the police is now carried on are open to bribery, and to all kinds of corruption? To an immense extent.

IX.—MR. J. C. MARSHMAN (*28th April 1853*).

The state of the police in Bengal is unfortunately very unsatisfactory; it is perhaps the worst part of our administration; there is very little security to property, and those who commit depredations are very seldom apprehended and punished. * * The people never can be roused to protect themselves; they submit to the exactions and to the oppressions of dacoits and public officers almost without a complaint.

Sess. 1852.
Vol. 27,X.—INDIGO COMMISSION'S REPORT (*27th August 1860*).

As regards the conduct of the police, it is not denied that up to this time, as a body, they are liable to the charge of venality and corruption; and there can be no question that indigo, like every agricultural or mercantile pursuit, may suffer from the want of a really good police. * * The cases in which the assistance of the police is most sought for.

APP. XI.

INEFFICIENT
POLICE.

Para. 7, contd.

are when lands are said to be sown or occupied forcibly. And when this interference is asked for, there can be little doubt with which party the advantage will ordinarily be. The frankest admissions have been made before us by planters as to the way in which money is given to officers of the police to ensure their doing their duty, or to prevent them acting or reporting unfairly. When matters come to this, that the assistance or support of the police can be purchased like any other article, it is quite clear that the advantage will remain with the party who has the freest hand and the fullest purse.

8. The two principal means by which zemindars, after 1793, sought to destroy the occupancy rights of the ryot, were to dispossess or to ruin him. The prevalence and impunity of violent crime were favourable to either method; and of such crime, dacoity was the most effectual to the zemindar's end, as it was most under his control. The zemindars began, before 1800, by appointing robbers to superintend the police; the evictions of ryots turned them into dacoits (App. VII, para. 13, section III); and the ball was then kept rolling down to near the period of the rent and sale laws in 1859, which put the ryots on proof of their rights, seventy years after the decennial settlement—that is, after a seventy-years' reign of spoliation, oppression, and lawlessness. The story of dacoity, down to 1831, is given by Mr. Mill in Appendix VI, (above); it is continued in the following extracts:—

I.—COURT OF DIRECTORS, TO BENGAL GOVERNMENT (*30th March 1831*).

Papers,
1831-32,
12.

In 1812, the evil of dacoity in Bengal was particularly noticed in the Fifth Report of the Committee of the House of Commons. The Committee referred to a despatch from Bengal dated in 1810, in which it was stated that the commission of robberies and murders, and the most atrocious deliberate cruelties, was established; that these offences were not of rare occurrence, or confined to particular districts—they were committed with few exceptions, and with slight modifications of atrocity, in every part of Bengal. The Committee adverted to the endeavours of the Government from 1801 to 1807 to suppress dacoity; and they remarked: “But, notwithstanding these measures, the disorders which they were intended to subdue still increased, and towards the end of 1807 had acquired such a degree of strength, as to oblige the Government to resort to measures much more forcible than had hitherto been tried for the deliverance of the country from this growing and intolerable evil.” But since 1812 the reported offences of dacoity had fallen from 1813 to 1817 to a yearly average of 339, and in 1828 to 167, against a yearly average from 1803 to 1807 of 1,481, and from 1808 to 1812 of 927.

II.—MR. J. C. MARSHMAN (*28th April 1853*).

Dacoities are very frequent in Bengal, more especially in the districts immediately round the presidency. * * * Dacoity is the normal crime of Bengal, especially of the Lower Provinces. As far as we have any

knowledge, it has always existed. It fluctuates with the vigorous efforts of the Government to put it down. About forty years ago, the system of dacoity had reached such a state of perfection, that the Government were obliged to employ Mr. Elliot and the well known Dr. Leyden to go into the disturbed districts; and the most stringent measures were adopted, and the district of Kishnaghur in particular was almost cleared from dacoits; but the crime has now revived.

APP. XI.
DACOITY.
Para. 8, contd.

III.—SIR F. J. HALLIDAY (*14th March 1853*).

Q. 1920.—In four or five districts in the immediate neighbourhood of Calcutta, so far from a diminution, there has been an increase of dacoity of late years; in other districts there has been a diminution; but all over Bengal there has been a great diminution during the last few years in the atrocity of the nature of those gang-robberies; dacoities are more numerous, but they are more insignificant in character.

Q. 1921.—Do you mean to say that there has been an increase in the number of gang-robberies of late years, as compared with the period when gang-robberies were so rife in Kishnaghur and Burdwan in former years? I am not prepared to say whether it is so or not; but as regards the periods with which I am better acquainted, there has been a great increase.

IV.—MR. WELBY JACKSON—*October 1853 (report of an official tour of inspection of Bengal)*.

APP. XI. V.—COMMISSIONER OF DACOITY (*20th April 1862*).

DACOITY.

Para. 8, contd.

The Magistrates of Shahabad and Ghazipore, and the Dacoity Commissioner of Behar, have been endeavouring to arrest the persons who compose this formidable gang. But the dacoits are protected by the landholders in those districts; and unless a stringent order is passed on these confederates of dacoits, it will be difficult to apprehend them. The existence of the gang was known to the late Superintendent of Police, who, I find, issued a circular to all magistrates on the 19th January 1857 to watch these dacoits. It will not be easy to exterminate the gang until the zemindars who protect them are compelled to give them up. The Dacoity Commissioner of Behar informs me that he is baffled in all his attempts by the zemindars. The evidence collected in this office against the dacoits is sufficient to ensure their conviction; and it is to be regretted that the influence of the zemindars should be used to aid these persons in their endeavours to escape punishment. It appears to me very clear that the zemindars share in the profits of dacoity.

9. The zemindar's power of summoning ryots to his cutcherry, and the law of distraint (Huftum and Punjum, or Regulations VII, 1799, and V, 1812) were powerful instruments of oppression of the ryots. They were only repealed by Act X of 1859. The advantage which Huftum and Punjum gave to the zemindar has been described as a knock-down blow to the ryot by way of a beginning (Appendix XII, para. 9, sections II and III). Through the corruption and dishonesty of distrainers and sale ameens, the blow was always effectual.

I.—BOARD OF COMMISSIONERS, FURRUCKABAD (*6th August 1811*).

his prostration
of ryots before
zemindars was
testified of a
people in the
North-Western
Provinces, who
are more spirited
than the people
in the Lower
Provinces of
Bengal.

In securing the landlords from these difficulties and embarrassments, which opposed even the most moderate use of this summary proceeding, the modifications introduced by Regulation VII of 1799 have, without intending it, furnished them with an engine of oppression and extortion as irresistible as their original powers were ineffectual. The penalties annexed to any unfounded complaints against the distrainer have operated as a denunciation against all complaint whatever on the part of the tenant, whose mistrust of the result of a long litigation with a powerful and opulent antagonist is increased by the present danger attaching to a failure; and he is, therefore, induced to submit patiently to every injustice, rather than attempt to seek redress at the expense of an immediate interruption of the labour on which his family depend for support, and with a prospect of total ruin in the end.

II.—MR. WELBY JACKSON (*October 1853*).

(a). The state of the law for the decision of suits between landlord and tenant requires alteration. Every one concurs in condemning it, and declares that Regulations VII, 1799, and V, 1812, are mere instruments of oppression in the hands of the landlords. By the help of these instruments, a zemindar by simply stating an untruth can either consign a man to prison, or sell off his property by distress as a preliminary,

without any previous inquiry into the validity of his claim by a court or public officer. This power is not only in the hands of the zemindars, but also in the hands of their agents, gomashas, petty farmers—in fact, of any one who pleases to assert falsely; whether in part or entirely, that a cultivator is in balance of rent due to him. How totally regardless the Bengalis are of speaking the truth, and how perfectly ready they are to make use of any fraudulent trick to serve their purposes, is too notorious to need mention. Fraud and falsehood from the highest to the lowest are the rule in Bengal, and, when successful, are not in the least disreputable; it may easily be inferred what a terrible engine of oppression these laws form in such hands.

APP. XI.

HUFUM AND
PUNJUM.

Para. 9, contd.

(b). *The tenants have no effectual remedy.*—It may be said the ryots have a remedy in giving security and bringing their suit to remove the attachment of their goods, or prevent the incarceration of their persons; but what a difficult, almost impossible, matter it is for a poor man to find security; and further, it must be security to the satisfaction of the ferosh ameen or the nazir, both of whom are probably bribed by the more powerful party to reject it if tendered; and, again, the party arrested must go under arrest to the sudder station, sometimes from 50 to 100 miles off, before his tender of security can be considered, leaving his wife and children starving in his absence; and after reaching the sudder station, he is of course distant from the assistance of all who might be disposed to be his security. The fact is, security cannot be given by a poor man; and the remedy assigned him by the law, the preliminary of which is security for the amount claimed, is useless. The result is, that his property and his person are completely in the hands of his landlord.

(c). Again, though the ryot might in very gross cases be able to give security, he seldom has the opportunity. If the object is oppression, and the claim a false one, the zemindar who issues the notice of claim, either himself or through the collector's nazir, takes good care that it shall not be served; but a return of service is made without. True, he is liable to punishment for this on suit; but it is impossible to prove it against him, so that, in effect, he acts with perfect impunity. These legal remedies are available only in the hands of the rich; the poor are without the means of profiting by them.

(d). *The zemindar has, in effect, arbitrary power.*—Such must be the case where the zemindar acts spontaneously on his own legal responsibility, and the ryot is left to enforce that responsibility by process of law. There is but one remedy—that the zemindar shall no longer be allowed to be judge in his own case, subject merely to unreal and ineffective restrictions; no ryot or other persons should be liable to be imprisoned, or to have his goods sold by distrait, without some previous enquiry by an impartial person into the validity of the claim against him. The enquiry, too, must not be formal, but fair and real. It is too much the practice in Bengal, even for the courts of justice, to say, "The witnesses say so and so; I have no reason to disbelieve them," when it is well known that the witnesses can be purchased for a few annas a piece; and that, unless there is something more than their assertion to establish a fact, no one is convinced of the truth of it. I would urge that the previous inquiry should be careful and effective, as

APP. XI. well as speedy, that a poor labouring man, whose daily bread depends upon his daily labour, may not be starved into compliance by legal delays.

—
MUFTUM AND
PUNJUM.
—
Para. 9, contd.

(e). It is scarcely to be conceived how enormous is the extent of tyranny and oppression carried on under the present law; so much so, that zemindars and men of respectability have assured me that almost all the claims enforced by those means are false; the ryots so well know the power of the zemindars that, if they are really in balance, they never think of contesting the point.

III.—EDITOR OF THE "HINDOO PATRIOT" (BABOO HURISH CHUNDER MOOKERJEE), BABOO SUMBHUNATH PUNDIT, AND OTHERS (27th September 1857).

The number of summary processes available by landholders against their tenants for various purposes is already large; and it is a notorious fact that they are frequently abused for the purposes of oppression and extortion. Tenants are compellable by force, used at the discretion of private individuals, to attend at the cutcherry of their zemindars to adjust the accounts of rent; their personal and moveable property and crops are liable to distraint and sale after a mere reference to the local revenue authorities; they are liable to be arrested with or without previous notice by a process issued on the application of the landlord or his servants without any previous enquiry as to the necessity thereof; they are liable to be amerced in sundry penalties on a summary investigation of complaints preferred against them. These remedies, devised originally for the better realisation of the land revenue of the country, public and private, are, it is well known, now a terror to the well-disposed part of the tenantry of the country, and have practically reduced an immense majority of the nation to a condition considerably below that of freemen. The proposed law, "to facilitate the ejection of occupiers of land whose title has ceased," will, we have ample reason to fear, complete the misery of their cottierism.

IV.—BILL TO AMEND LAW FOR RECOVERY OF RENT—10th October 1855
(STATEMENT OF OBJECTS AND REASONS).

(a). MR. E. CURRIE.—I have made considerable alterations in the law of distraint, in the interest of the tenant, with the view of preventing as much as possible the abuses which have been so generally complained of; * * and I have made alterations in the mode of procedure, mainly with the object of preventing the abuses, now said to be very general of selling property on a mere nominal distress, without any opportunity allowed to the tenant to replevy.

(b). JOINT MAGISTRATE AND DEPUTY COLLECTOR, CHUMPARUN, 5th March 1855 (his letter having been selected as an annex to Mr. Currie's statement of objects and reasons, because "it contains a forcible statement of some of the evils which the Bill seeks to remedy"). The whole system of distraint, however, is radically bad; and I should be very glad to see the power of distraint, as it at present exists, entirely taken away from the landholders. I have seen many instances since my arrival in this district of oppression under this Regulation. One I remember in particular, where a teekadar had distrained property to the amount of two hundred rupees, alleged deficit of rent on fifty beegahs

of land. I happened to be encamped shortly afterwards at the village in which the land was said to be; and on going to the fields (at the request of the defendant), and calling in the putwaree and others to show the 50 beegahs said to be cultivated by the man whose property had been distrained, the whole affair came out. The *assamee* in reality cultivated four and a half beegahs only; all the rest was a fictitious claim got up *merely to drive the man into paying enhanced rents*. This, I fear, is only one of a very numerous class of cases. Had I not been on the spot, the other party would have provided such strong evidence as it would have been impossible, even if the man could have got anybody to speak for him, to rebut; kabuliuts would have been forged, and a decree in all likelihood given for the value of fifty beegahs instead of four. The unlimited power of distraint possessed by the zemindar is not sufficiently checked by the provisions of Regulation V of 1812, and becomes a tremendous engine of oppression against the ryot.

V.—MR. F. A. GLOVER, OFFICIATING JUDGE, RUNGPORE (1858).

I would allow no landlord to distrain without first appearing before the Collector or other constituted authority, and making oath as to the truth of the arrear. More oppression is committed under the power of distraint than is conceivable by any one who has not had a long and personal acquaintance with the way in which distraint for rent is managed in the Mofussil. I venture to say that in nine cases out of ten, the arrear is fictitious. No ryot, if really in arrears, would refuse to enter into arrangements with his landlord. A ryot can have no security, either in person or property, so long as it is in his (zemindar's) power to distrain his goods, or arrest him, merely because he, the zemindar, chooses to allege that a balance is due. The privilege of having the distraint withdrawn on giving security to bring a suit against the distrainer, is worthless to a man who lives from hand to mouth, and would rather put up with the first loss, if it spared him from absolute ruin, than go to law with a man who possesses so many ways of oppressing him, and who would be sure, in the end, to be victorious. * * I have seen too much of the tyranny and rascality exercised under the guise of law in this matter of distraint, even to approve of a Regulation that continues such powers in the hands of people so utterly unworthy of possessing them.

VI.—MR. W. TAYLER, JUDGE, MYMENSING (1858).

I must confess, however, that I would like to see the zemindar's powers of distraint either wholly abrogated, or placed under still more stringent restrictions. I know not to what extent the power may be abused in Bengal; but in Behar it is seldom resorted to, except for purposes of injury and oppression.

VII.—MR. H. C. HALKETT, OFFICIATING JUDGE, HOOGHLY (1858).

Where the zemindar is disposed to behave tyrannically, ~~nothing~~ whatsoever that I can see interposes to prevent his attaching ~~property~~ for pretended arrears, where, when, and from ~~whatever~~ tenant he ~~finds~~ to make his victim.

APP. XI. VIII.—MR. H. C. METCALFE, JUDGE OF TIPPERAH (1858).

HUFUM AND
PUNJUM.

Para. 9, contd.

The power granted by the old law to distrain movable property is thus taken away, and very justly too, as much oppression is committed by distrainers under the existing law, who may, and do, plunder a ryot of all he may be possessed of, and then, to save themselves from the criminal courts, give in a list of a few of the articles to the sale carriage as attached by them for rent. * * A creature of the distrainer is often made a co-defaulter with the real owner of the attached property, and the attachment is fraudulently made in their joint names, and the property given up to the creature of the distrainer, who is a mere man of straw, under the pretext of security being furnished by him.

10. Regulation VII of 1799, section XV, clause 8, recognised the power of zemindars and other landholders “to summon, and if necessary compel, the attendance of their tenants for the adjustment of their rents, or for any other just purpose.” This law was only repealed by Act X of 1859—that is, after it had operated for sixty years with the following results :—

I.—REVD. A. DUFF AND 20 OTHER MISSIONARIES *April (1857)*.

(a). The power of the zemindars to compel the personal attendance of their tenants, for the adjustment of rent and other purposes, is, practically, in many parts of the country a substitute for the regular and ordinary processes of the law, and is virtually the subjection of the tenants to a state of slavery. And, further, this evil is in many instances greatly aggravated by the estates being held in co-tenancy, so that several shareholders, who are often in a state of conflict, equally exercise an arbitrary and unrestrained authority.

(b). While the law thus presses severely on the tenants, the zemindars, who were primarily regarded simply as collectors of the land-tax, or farmers of the revenue, now derive, from the increased cultivation of the soil, and the greatly increased value of its produce, a revenue greatly in excess of the revenue which they pay to Government. Thus, while the zemindar has been rising in wealth and power, the tenant has been sinking into penury and dependence, subject to illegal and exhausting exactions, harassed by contending proprietors, and oppressed by the exercise of extra-judicial powers. * * These zemindars have, since the perpetual settlement, not only acquired by law the power of enforcing their demands by *ex-parte* proceedings, commencing with the arrest and imprisonment of the tenants, but have also received the sanction of the law, as already stated, to their custom of enforcing the personal attendance of their tenants at their pleasure; and both these powers, especially the latter, your petitioners believe they often greatly and shamefully abuse.

II.—SIR FREDERICK J. HALLIDAY (*20th November 1858*).

There is some variation of opinion among the officers consulted as to the restriction put upon zemindars by section VIII of the Bill, in respect to compelling the personal attendance of their ryots. Upon this I agree fully with Mr. Samuells that, although the withdrawal of this power

will be severely felt by some small zemindars, whose ryots have easy means of escape from their power, yet the present system leads to such grave abuses, and allows of such intolerable oppression, that it ought, without doubt, to be amended in the manner proposed by this Bill.

APP. XI.
—
RYOTS
ATTENDING AT
ZEMINDARS'
CUTCHERRIES.

III.—MR. F. A. GLOVER.

Para. 10, contd.

The oppression practised by the landholders in this particular is enormous; they can bring to the verge of ruin any one whom they may have a spite¹ against, by summoning him to their cutcherries on the pretence that he is in balance, and keeping him in what is actual duress, away from his employment. No private individual should hold such irresponsible powers.

IV.—BOARD OF REVENUE (*1st December 1858*).

The Board heartily approve of the abolition of the power of the zemindars to compel the presence of their under-tenants for the settlement of their rents. They consider this power to be a fruitful source of oppression, and its existence to be quite unnecessary for the protection of the zemindars.

V.—MR. E. STEER, COMMISSIONER OF REVENUE (*27th August 1858*).

There is no denying that, under the power possessed by landlords of compelling the attendance of their tenants, the greatest oppression has prevailed throughout the length and breadth of the land. But the authorities have been always severe in dealing with such cases when they have been brought to light; and my own belief is, that there is not now anything like the tyranny exercised over the ryots by their landlords that there used to be.

VI.—MR. A. GROTE (*2nd October 1858*).

The power, and with it the temptation, to harass and detain, is all that is taken away; and one of the gratifying consequences of this provision will be the discharge of numerous *nugdees* and *latyals* who have hitherto fed upon the tenantry.

VII.—MR. W. H. ELLIOT, COMMISSIONER OF BURDWAN (*1858*).

The Officiating Collector of Beerbhoom protests against the withdrawal of the zemindar's power to compel the ryot's attendance, as utterly ruinous to the landholder. I rejoice in it, and think it will be generally approved as a long-needed boon, and just delivery from fearful tyranny.

The foregoing accusers of the law which, by compelling ryots to go to the zemindar's cutcherry, fostered tyranny and oppression throughout the length and breadth of the land, were, however, mere devil's advocates; the following saint-like pleading in its favour was based on the eternal principles of the zemindary settlement.

¹ Or whose rent they may have wished to enhance.

APP. XI. VIII.—BENGAL BRITISH INDIAN ASSOCIATION (14th February 1859).

RYOTS
ATTENDING AT
ZEMINDARS'
CUTCHERRIES.

Para. 10, contd.

Your petitioners regard this provision as highly objectionable, believing, as they do, in the utility, and even necessity, of the existing rule. The power of summoning the ryot to the zemindar's cutcherry on necessary occasions is so essential to the management of an estate, that every one, with a practical knowledge of its working, will allow that its abolition will bring the machine of the zemindary system to a stand-still. It is from this belief and conviction, your petitioners sincerely believe, that the legislature legalised a power which the zemindars had enjoyed from time immemorial, and in the exercise of which they had met with vexatious interference from the magistrates of the time. Indeed, the rights of the zemindars could not be exercised, and the duties to the State, which are imposed on them under heavy penalties, could not be performed, were the power to be withheld from them. * * It is said that the abuse of this power suggests the withdrawal of it as proper. But those who urge this, not merely forget all the reasons for which it was granted, and which render the continuance of it indispensable, but they overlook the injustice of punishing the many for the crimes of the few.

11. This reasoning was ineffectual, but it ought to have prevailed; for its perception of the spirit of the zemindary settlement was exquisite; the spirit, that is, of a weak benevolence which loaded the zemindars with benefits at the expense, not of itself, but of the ryots, which carved out estates for zemindars by confiscating the rights of millions of ryots, and which released a few zemindars from liability to confinement by subjecting millions of ryots to actual confinement in their turn in zemindars' cutcherries. Until the zemindary settlement, zemindars used to be imprisoned if they failed to pay the revenue. With a benevolence "worthy the soul of Cornwallis," zemindars (a very small body compared to the ryots) were exempted, in 1793, from this liability; and in 1799 the *Huftum* Regulation armed them with power, over millions of cultivating proprietors, to procure the imprisonment of ryots by the Collector on false *ex-parte* statements of balances due; and further, to save the zemindars the trouble of a false statement before the Collector, they were armed by this Regulation, VII, section XV, clause 8, of 1799, with power to cause ryots to be dragged to zemindars' cutcherries, with the obvious natural consequences, *viz.*, unlawful imprisonment, and ruin if the ryots did not submit to the exactions of the zemindars. The benevolence of Government shrank from imprisoning a few zemindars for non-payment of a moderate perpetual rent; accordingly, exemption from that liability was conceded to those few by the vicarious imprisonment from time to time,

during sixty years, of millions of ryots, so that they might be the better forced to pay rack-rents to lightly assessed zemindars. Sixty years having hallowed, into vested rights, these huge enormities of benevolence—this vicarious imprisonment of myriads for the benefit of a few—the British Indian Association urged, with much truth and seriousness, that the withdrawal of the vested rights involved “the injustice of punishing the many for the crimes of a few.”

12. Perhaps there is a slight inaccuracy in this statement. For it may be that we should distinguish between 1793 and 1799. In the earlier year, benevolence was active; in the later year it slumbered, and its place was taken by that in whose name meanness and wrong have been conscientiously and self-complacently done in all ages, *viz.*, principle—the principle, in this case, of securing, no matter at what hazards to helpless millions, the Government revenue, which the Government had benevolently fixed for a few zemindars at a light assessment for ever. All the tyranny and oppression under the Regulation of 1799 were allowed for sixty years, on the “principle” that they were necessary for the punctual realisation of the public revenue. And, in due time, “principle” reaped its reward. Under the Regulations of 1799 and 1812, the ryots in Orissa and Behar, more markedly than in other parts of the Lower Provinces, were ground down to a wretched poverty by the tyranny and exactions of zemindars; and in 1866 and in 1874 “principle” had the rare satisfaction of stepping aside, while benevolence took its place, and spent in the relief of famine some seven millions sterling—that is, more than “principle” need have lost, in arrears of revenue, if it had spared the ryots the tyranny, exactions, and rascality (paragraph 9, section iv), which were tolerated for the sake of “principle” in the sixty years from 1799 to 1859.

13. The chains of the ryot were riveted, further, by fraud, perjury, and forgeries,—by incomplete or worthless pottahs or leases to ryots,—by forged kabuliuts or agreements purporting to have been given by ryots to zemindars,—by the withholding of receipts, and by like frauds. These were the additional weapons with which zemindars strove for possession of Naboth’s field, or to raise his rent.

I.—INCOMPLETE POTTAHS AND KABULIUTS.

(a).—MR. P. TAYLOR, JUDGE, WEST BURDWAN (1853).

In Zillah Behar, when I was Collector, it was customary in bhowli cases, or those of ryots paying commutation for rent in kmd, for the

APP. XI.

INCOMPLETE
POTTAHS AND
KABULIUTS.

Para. 13.

APP. XI. zemindars to evade giving any *pottahs* at all, and, instead of *kabuliuts*, to exhibit with their summary plaints mere *hissab baquees*, drawn up without the apparent knowledge of the ryots at the close of the year. By this dishonest and oppressive system, they entirely evaded the rule of the decennial settlement, which directed that, "in cases where the rate can be specified, such as where the rents are adjusted upon a measurement of the lands, after cultivation, or on a survey of the crop, or where they are made payable in kind, *the rate and terms of payment*, and proportion of the crop to be delivered, with every condition (including the length of the rod used in measurement), should be clearly specified." At the same time, by the above expedient, the zemindars contravened another rule, which enjoined calculation and ascertainment of all instalments, with reference to the time of reaping and selling produce; moreover, by fixing the *hakim's hissab* at the end of the year, when grain was dearest, they obtained a much larger money value for it than was equitable to the cultivator.

INCOMPLETE
POTTAHS AND
KABULIUTS.

Para. 13, contd.

(b).—MR. E. A. SAMUELLS, COMMISSIONER OF PATNA (1858).

The first interpolation is necessary, in order to protect the ryot against the fraudulent suits, so common in Behar, in which he is sued for the rent of land which he never occupied; the frequent changes in the quantity of land cultivated by the ryot rendering this fraud more difficult of detection in Behar than elsewhere. In pottahs for lands held under a butace or bhowli tenure, it is impossible to specify any money rent. The section, therefore, provides that such pottahs shall state the proportion of produce which the ryot is to deliver; but it is evident that, unless the area is also given, this provision is useless. The same pottah or its counterpart may form the basis of a suit for five hundred rupees, or for five rupees, as the landlord pleases.

(c).—MR. W. H. ELLIOTT, COMMISSIONER OF BURDWAN (1858).

I think it most important that the pottah and kabuliut should invariably contain a very clear specification of the tenant's land. Many will be found merely to mention "about bigahs of land in the village of , at an annual rental of Rs. "; and a poor ryot is frequently made to pay for "other land" declared to be in his possession, and so proved by witnesses, when the fact of his having paid for what is named in his pottah cannot be denied.

II.—FORGED KABULIUTS.

(a).—MR. H. ATHERTON, OFFICIATING JUDGE, TIRHOOT (1858).

An excellent provision, if the ryot can register his pottah in the Collector's office; but, unless the pottah be registered, the kabuliut will be fabricated, when needed, by the zemindar, and the denial of the poor ryot will rarely protect him.

(b).—MR. E. LAUTOUR, JUDGE, 24-PERGUNNAHS (1858).

The great evil at present is the general resort to forged instruments—forged kabuliuts on the one hand, forged receipts on the other.

(c).—MR. W. S. SETON-KARR, OFFICIATING JUDGE, JESSORE (1858).

APP. XI

RECEIPTS FOR
RENT.

Para. 13, con

(2).—Does this mean that any person producing a *kabuliut* of any kind as given by a cultivator may distrain the produce of the land? If this be intended, I fear that the ryot will be much less protected than was hoped for. To make a *kabuliut*¹ costs nothing; and few talukdars, zemindars, or others will have the slightest hesitation in procuring a forged document of this sort, if its production will enable them to sell produce off-hand.

(d).—BENGAL BRITISH INDIAN ASSOCIATION (14th February 1859).

The consequence to be dreaded from such a state of things is, either that the courts will be swamped with suits for the enforcement of *kabuliuts*, which, with the present machinery, it will be next to an impossibility to get through within any reasonable period, or that the zemindar will betake himself to fabricating *kabuliuts* to enable him, under the proposed law, to realise his just dues by process of distraint, which, in the generality of cases, is his only remedy.

(e).—REV'D. A. DUFF AND 20 OTHER MISSIONARIES.

Your Hon'ble Court, for instance, may, in the Rent Bill, provide that no distress shall issue, save on the production of a *kabuliut*; but there exists no security that forged *kabuliuts* will not be produced with impunity, the only remedy of the cultivator being a hopeless litigation in a civil court, in which the expense or the delay would alone effect his ruin.

(f).—MR. H. C. METCALFE, JUDGE OF TIPPERAH.

The zemindar, to protect himself, will no doubt resort to two subterfuges, for which a loophole is allowed him by sections IV and V. He will either declare that "the land is khamar, nij-jote, or seer land," belonging to the proprietor of the estate or tenure, and leased for a term, or year by year, to a resident cultivator; or will produce a false written contract or *kabuliut* for the payment of specific rates of rent, which he will prove by perjured witnesses; and thus, in both cases, the rule will fail to secure the land to the ryot at the pergunnah rate. A great deal of litigation and perjury will be the consequence.

III.—RECEIPTS FOR RENT EVADED BY ZEMINDARS.

(a).—MR. H. ATHERTON, OFFICIATING JUDGE, TIRHOOT (1858).

If this rule be allowed, it will be absolutely necessary to allow the ryot to deposit his yearly rent in the Collector's hands, for receipts for payments are constantly refused; and if the ryot cannot be allowed to deposit his rent, his only course will be to refuse payment altogether, until he has had a decree given against him, which is a common practice

¹ The agreement which the ryot signs and gives to the zemindar.

APP. XI. now, simply from the impossibility of getting receipts from the zemindar or his agent.

RECEIPTS FOR
RENT.

Para. 13, contd.

(b).—MR. E. LAUTOUR, JUDGE, 24-PERGUNNAHS (1858).

So of receipts. What are the rubbishy bits of paper as evidential exhibits, which the zemindar may repudiate or his ryot forge, and either of which is done daily? * * Again, the law should provide for tender of payment into court whenever a zemindar refuses to receive the rent. I have cases where that is systematically going on, partly to harass the under-tenant and oppress him with law expenses, and partly to get a decree upon which to found proceedings on eviction. In Shahabad this was the method taken invariably by the Dumraon Rajah to evict his mokurridars for value. Here it goes on in the Sunderbunds, where a grantee is systematically adopting these same tactics to eject his gantidar; and his method is to refuse rents and institute oppressive Act VII suits in the collectorate, setting on foot the usual consequent civil suits. Numerous cases are always occurring in which the greatest boon would be conceded if parties were allowed to pay into deposit, to the credit of the zemindar, any sums the zemindar refused to receive.

(c).—MR. G. L. MARTIN, JUDGE, SARUN (1858).

During my residence in this zillah and Tirhoot, I have frequently observed that the mode of granting receipts to ryots is not on separate pieces of paper in the usual form of an acknowledgment, but on a single slip, which is headed with the ryot's name, and below that the several payments made in the year are entered with the dates; but the signature of the receiver is seldom, if ever, affixed, and the result of this practice, which extensively prevails, is, that when tendered as exhibits in suits, they are easily repudiated, and extremely difficult to prove. Of course it is optional with the ryots to accept an acknowledgment which can so easily be denied; but, in the main, they are so entirely at the mercy of the landlord, farmer, or agent, and often so ignorant, they cannot help themselves. The practice referred to appears to me to proceed from much the same sort of feeling which is often shown by proprietors and farmers, in their reluctance to grant "farugs," or acquittances.

IV.—FRAUDS, PERJURIES, AND FORGERIES.

(a).—COLLECTOR OF RAJSHAHYE (16th August 1811).

The alarming and distressing height to which perjury has risen in this country is, I firmly believe, in a great degree to be attributed to the power of distraint at present vested in the zemindars; and I think I may venture to assert that there are but few gentlemen in the judicial line who do not coincide with me in the opinion.

(b).—INDIGO PLANTERS' ASSOCIATION (1856).

This procedure is regarded by different members with various degrees of apprehension, as a probable source of frauds, forgeries, and perjuries—the usual instrumentality of mofussil litigation.

(c).—MR. H. ATHERTON, OFFICIATING JUDGE, TIRHOOT (1858).

APP. XI.

SUMMARY.

PART. 14.

Section VII supposes that the ryot is capable of contesting the demand of his zemindar. He cannot, generally speaking, do so from his poverty, and from the fact of the zemindar or his agent, when inclined to be unjust, being able to secure any amount of evidence against the ryot. Nothing, in my opinion, can protect the ryot against oppression, but the registration of his pottah in the collector's office, with permission to pay the rent of the year in one sum into the collector's hands.

(d).—BENGAL BRITISH INDIAN ASSOCIATION (14th February 1859).

Your petitioners would respectfully beg to be understood that it is not from a captious spirit of opposing a beneficial measure that they have been induced to offer these remarks, but from a sincere conviction of the unnecessary hardship, not to say injustice, which the proposed law is calculated to entail upon the landholders, and the encouragement it offers to perjury and forgery, which your petitioners conceive will be effectually checked if the exchange of pottahs and *kabulints* were directed to be made with the knowledge of the collector of the district, in the manner suggested by your petitioners.

(The Association hinted thus mildly that perjury and forgery were ordinary weapons of offence and defence in the litigation between ryots and zemindars.)

(e).—REV. A. DUFF AND 9 OTHER MISSIONARIES (9th March 1858).

Perjury has almost ceased to be regarded as morally wrong; it constitutes the stock-in-trade by which numerous witnesses for hire subsist. The impunity and success with which systematic perjury and the forgery of documents are commonly practised, tend to encourage the already too prevalent habits of falsehood and deception among the great body of the people; and, as a necessary consequence, justice is now constantly mocked and defeated, or the powers of the law are used, without remorse, as engines of oppression and extortion, through the infamous arts of the traders in corruption.

14.—SUMMARY.

REV. A. DUFF AND 20 OTHER MISSIONARIES (April 1857).

Year after year the condition of the tenants appears more and more pitiable and hopeless. Your petitioners are compelled to add that other evils increase the wretchedness of the condition to which a tenant is thus reduced. The village chowkidars are the servants of his landlord; the Government police are corrupt, and he cannot vie with his landlord in purchasing their favour. * * Superadded to the evils the cultivating classes endure from a corrupt and inefficient police, and an administration of civil and criminal justice which confessedly requires extensive improvement, they are liable to be constantly harassed by the conflicting and unsettled claims, either of contending shareholders of joint estates, or of contending neighbouring proprietors; by the severe laws of distraint and arrest; by the power of their superior landholders, whether

APP. XI. zemindars or middlemen, to compel personal attendance at their pleasure ;
— by illegal exactions ; by the unfixed nature of their tenures ; and by
SUMMARY. the prevalent custom of refusing both leases and receipts.

Para. 11, contd.

15. It appears from this Appendix that the period from 1793 until near 1859 may be characterised as a period of lawlessness of zemindars, who corrupted, kept in their pay, or controlled the police ; harboured dacoits and employed club-men who kept ryots in terror ; abused the *Muzlum* and *Punjum* Regulations, and the zemindar's power of summoning ryots to their cutcherries ; gave incomplete pottahs and receipts for rent ; used forged *kabulyuts* ; had recourse to frauds, perjuries, and forgeries. All this was not done personally by the zemindar ; the greater part was done by middlemen and subordinates ; but the result was the reduction of the ryots into absolute subjection to zemindars. Act X of 1859 was then passed with the view of protecting the ryot ; but it required from him proofs of right which could have survived this period of lawlessness only by a miracle.

APPENDIX XII.

ZEMINDARS AND RYOTS, IN THEIR RELATIONS AS LAND- APP. XII.
LORDS AND TENANTS, ACCORDING TO REPORTS FROM 1871
To 1876.

1. The land revenue, as fixed at the decennial settlement for Bengal, Behar, and Orissa (excluding the Cuttack division), was as follows:—

LAND REVENUE
AT THE PERMA-
NENT SETTLE-
MENT.

Para. 3.
Administration
Report, 1872-73,
Part II, page 71.

			Bengal. Rs.	Behar. Rs.	Total. Rs.	Sicca. Rs.
1790-91	...	...	2,32,78,541	53,09,181	2,85,87,722	2,68,00,989
1871-72	...	...	2,55,04,775	97,04,091	3,52,08,866	
			<hr/>	<hr/>	<hr/>	
Increase	...	...	22,26,234	43,94,910	66,21,144	
			<hr/>	<hr/>	<hr/>	

2. The settlement embraced, roughly speaking, the tracts of country now comprised in the divisions of Burdwan, the Presidency, Rajshahye, Dacca, Chittagong, Patna, and Bhau- gulpore. It also comprised part of the Hazareebaugh and Maunbhoom districts in the Chota Nagpore division, as well as Julpigoree, Goalpara, and Cooch Behar, which are now in the Cooch Behar division, but which then formed part of the Rungpore Collectorate. The revenue of the districts in the Assam and Cuttack divisions, and of the districts of Lohar- dugga, Singbhoom, Darjeeling, and the Bhutan Dooars, for 1871-72, has been excluded, as none of these districts were covered by the settlement of 1789 to 1791.

3. Some additions were made to the revenue demand when the zemindars were relieved of police charges, and other- wise; and in 1824-25 the demand had risen to Company's Rs. 2,98,62,021, being an increase of Rs. 12,74,299. After that period the revenue expanded as resumptions of invalid revenue-free tenures proceeded under Regulation II of 1819. In 1828-29 the current demand was Company's Rs. 3,04,27,770. Eighteen years later (in 1846-47) it had risen to Rs. 3,12,52,676; and after this period a fresh and very marked enhancement occurred, bringing the demand in 1848-49 up to Rs. 3,40,96,605.

APP. XII. During the three years 1847, 1848, and 1849, no less than 6,198 estates were added to the revenue roll by resumption; and the revenue was otherwise swelled by escheats, the assessment of lands brought to light by the Survey, and resettlements of Government estates. After this the demand remained almost stationary up to 1856-57, in which year it appears at the slightly reduced amount of Rs. 3,37,38,783. In the following year it rose to Rs. 3,39,10,362; and from that time there has been a steady expansion, interrupted in the year 1866-67 only by the famine, up to Rs. 3,55,34,022, which represented the current demand for 1872-73.

4. The increase up to 1846-47, when the revenue amounted to Rs. 3,12,52,676, was Rs. 26,64,954. The expenditure in 1874-75-76 for the Bengal famine amounted to 6½ millions sterling, interest on which at 4½ per cent. amounts to £292,500; so that the whole of the increase down to 1846-77, and a portion of the subsequent increase, have been lost, leaving the increased charges of administration since 1793 to be met from the remaining revenues of the province. One object of the permanent settlement was to secure in a rich landed proprietary, a provision against famine; instead of that, the famine expenditure saved many zemindars, among a class that is enriched not only by all that can be extracted from ryots on the scale in other parts of Bengal, but by a great deal more than is extracted from China through the opium revenue. In the Administration Report for 1875-76 it was observed: "Without the relief afforded by Government to the famishing people, there must have been some serious failure in the land revenue, and (what would have been a very great evil) some extensive transfer of landed property and ruin of old families. One counterbalancing advantage, then, of the heavy relief expenditure incurred by Government, was this, that the great interests pertaining to the land revenue were preserved intact."

tion
75-76,
age 39.

I. The land revenue assessed in the last century, when the conditions of the country, and the relative capabilities of different districts, were vastly different from what they now are, bears no sort of proportion to the present value of the land; while in some places the revenue may still amount to a tolerable assessment, in others it amounts to no more than a very small quit-rent. The total rental of each estate may be to the revenue in the proportion of 3, 10, 50, or 100 times. It is evident, then, that the land revenue could not be taken as any guide to an assessment upon landed property; on the contrary, the value of the property and the free income of the proprietor are in the inverse ratio to the amount of the assessment.

II. The Bengal Road Cess Act of 1871 is a measure which provides for the valuation of the lands and of the various rights to the land, and for the record of the holders of these various rights. It then establishes local bodies for determining the expenditure, and striking a rate for the year to meet the necessary expenditure on the whole immovable property of the district. This rate may in no case exceed one-half anna in each rupee of the net profits of the landholders and other owners, that is, about three per cent. The valuation is to last for five years, and to be subject to revision at the end of that period.

APP. XII.

ROAD CESS.

Para. 4, *quid.*

III. The zemindars are bound to render an account of all rents receivable by them from their under-tenants, it being provided throughout, in addition to penalties for false returns, that no rent not returned shall be recoverable by law. When the zemindar's returns are received, if, as generally happens, their immediate tenants are sub-holders, superior to the cultivating ryot, the same process is gone through with the sub-holders; they are required to file a statement of holdings under them, and so on, it may be through several gradations, till the actual ryot is reached.

IV. In regard to cultivating ryots paying less than Rs. 100 per annum, no attempt is made to distinguish between the different classes of ryots possessed of more or less beneficial interest in the soil. It is not sought to make an actual rack-rent valuation of the soil, but only an account of the rent actually paid.

V. The Road Cess Act proceeds on the principle that half the rate is to be paid by the occupiers, that is, by the ryots, and half by the rent-receivers, each according to his own share of the profit. On the superior holders is also imposed the duty of collecting the money due from those under them, and paying the whole in a lump for each estate. A valuation roll of each estate, and of the district, being completed, and the rate for the year being declared, half of that rate will be published as the rate payable by the ryots. The holder immediately above the ryots will collect from them the half-rate, and pay to his superiors the full rate for his holding, less half-rate on the rent or revenue receivable by the superior; and each superior holder will pay to his own superior in like manner, till the zemindar holding direct of Government pays the whole rate on the whole estate, less half-rate on the share of profits which goes to Government as land revenue. The effect is, that each holder passes on the ryot's half-rate, with a half-rate paid by himself on his own share of the profits.

VI (a). The provision which throws half the rate on the ryot is one which caused to the Lieutenant-Governor much doubt and hesitation at the time—he may say extreme doubt and hesitation; and he has been subject to a recurrence of doubt and qualms of conscience on the point ever since. Among other reasons to which he yielded (with recurring spasms of doubt) was the following:

(b). The law allows the proprietor to sue for enhancement whenever the productive powers of the land, or the value of the produce, have been increased by any means other than by the labour, or at the expense of the ryots. Now, if the roads and canals made by a local assessment on the proprietors open up the country, render it more easy to bring produce to market, and so increase the value of agricultural produce, it will

APP. XII.

ROAD CESS.

Para. 1, contd.

follow, in law and logic, that the proprietors will be entitled to an enhancement of rent on that ground. Either, then, the ryots will have to submit to an increase of rent, or there will be given to the zemindar an additional incentive to that process of general enhancement by litigation which, in the Lieutenant-Governor's judgment, is of all things most to be deprecated in the interest of all parties. The view which under these circumstances he has taken is, that it is really better for the ryot that the law should step in, and by a summary rule make that adjustment which would otherwise follow by a long and difficult process. We now say to him: "Improvements are about to be made by which you, the ryot, will benefit as well as the proprietor, and on account of which, if they be made by the proprietor, you would be liable to an enhancement of rent. Instead of allowing that process to go on, we will impose on you a very light rate, which we believe that you are able to pay; the expense of the improvements will be divided between you and the proprietor; they will not be improvements made otherwise than at your expense, but your own improvements in the expense of which you have shared; and thus by so sharing now, you will avoid the liability to consequent enhancement hereafter." It is thus that the Lieutenant-Governor justifies the imposition of the half-rate on the ryots; he may be right or he may be wrong, but of this he is sure, that on the whole question he has been actuated, and he believes that his Council have been actuated, by a regard for the interests of the people at large.

5. The number of estates and tenures of all sorts, valued for the road cess according to the latest returns in the Administration Reports to the end of 1876-77, including sub-tenures, but excluding ryots' holdings, is as follows:—

	Number of estates valued.		Number of tenures valued.		TOTAL OF		VALUATION MADE OF		Revenue of district.
	Paying revenue.		Paying rent.		Estates.	Tenures.	Estates.	Tenures.	
	Over Rs. 100.	Rs. 100 and under.	Over Rs. 100.	Rs. 100 and under.					Rs.
BENGAL—									
Eastern Districts (only Dacca Division) ...	4,870	1,03,259	21,926	5,31,573	1,09,129	5,53,504	2,55,43,750	2,09,46,131	51,02,916
Western Districts ...	4,573	13,536	10,059	1,43,201	13,169	1,53,260	1,84,90,625	1,20,81,901	77,33,517
Central Districts ...	6,137	17,403	20,476	1,70,910	23,590	1,91,386	2,98,35,353	1,77,03,581	98,96,840
	15,030	1,34,258	52,461	8,45,683	1,45,888	8,08,150	7,36,71,728	5,07,31,613	2,27,33,273
BEHAR ...	16,376	41,848	24,158	88,119	58,724	112,606	4,92,99,203	2,39,91,476	1,11,87,103
ORISSA ...	2,825	28,137	2,470	31,021	31,312	34,091	40,19,130	14,92,631	17,36,845
Lohardugga, Hazareebaugh, Maunbhoom...	258	1,164	4,236	50,645	1,422	51,981	37,40,869	35,38,294	3,01,103
	35,589	2,05,757	83,625	1,016,103	2,41,340	1,099,728	13,07,33,930	7,97,55,013	3,59,58,323

The demand for the road cess on lands and mines amounted for 1876-77 to Rs. 28,65,506, and for the cess year 1877-78 to Rs. 30,63,815. Besides this, the demand for the Public Works road cess for 1877-78 amounted to Rs. 34,99,334. The number of estates in Bengal and Behar paying revenue to Government were classed as follows for 1872-73:—

APP. XII.
CONDITION OF
THE ZEMINDARS.
Para. 7

			Estates upwards of 500 acres.	Estates under 500 acres.	Total.
Sylhet	...	...	570	53,368	53,938
Tirhoot	...	...	980	12,452	13,432
			1,550	65,820	67,370
Behar (remainder)	...	...	7,281	21,057	28,338
Bengal (do.)	...	...	7,449	51,043	58,492
			16,280	137,920	154,200

In 1877-78 the total number of estates was 146,380, a number of estates in Calcutta having been merged in the books as one estate in 1876-77. Of these numbers of estates many belong to one proprietor, so that the number of proprietors is less than the number of estates.

6. I. With respect to the valuations thus obtained for the road cess, we must remember that, as has been said, we have not sought to press the screw as tight as might be possible, on this the first valuation. We have been content to get a good approximation to a full valuation, trusting to the second valuation five years hence to render the result more exactly complete. In addition to the general disposition to under-state rather than over-state values, and to the possible under-valuation of small estates summarily assessed, it must be understood that, actual rents only being rendered, all persons classed as ryots who hold at fixed rates, having occupancy rights, or being otherwise in any degree privileged or beneficial tenants, are assessed only on the rent they pay, not on the rack-value. So far, then, as any ryots pay short of rack-rents, the valuation is below the outside valuation.

II. Taking all things into consideration, we may say that probably the land which has given an assessable rent-roll of something more than three times the land revenue, is probably worth four or five times the revenue, especially if we take permanently-settled districts only. The few not permanently settled pay a higher revenue in proportion than the others.

7.—MR. R. B. CHAPMAN (*3rd June 1868*).

I. As a matter of fact, the State resources which were given up in 1793 are not now, and have not for many years been, accumulated in the hands of a few wealthy individuals, who pass their time in selfish and careless luxury, but are distributed among a very large number of persons.

Parl. Paper,
Sess. 1870,
Vol. 52.

APP. XII.

CONDITION OF
ZEMINDARS.
7, contd.

II. From statements which I have seen made, not without authority, and in places where error and ignorance on such subjects are not to be expected or assumed, I incline to think that I shall cause some astonishment when I assert, as I do without fear of contradiction by any one who is really acquainted with the facts, that the zemindars of Bengal are not, as a body, wealthy men. There are *some* rich men among them, a few *very* rich men, but the bulk of the class are men of very limited income, and too many of them of embarrassed circumstances.

III. I think it very likely that not one-fourth of the primary payments of the cultivators reach the Government treasury, and that the proprietors of the land in Bengal divide among them a profit of at least £10,000,000 a year. But this is distributed over an immense variety of tenures, from the ryot with a right of occupancy, who, it is probable, ordinarily does in practice enjoy some beneficiary interest, to the Rajah of Burdwan, or the Rajah of Durbhunga.

IV. The settlement has, I repeat, so worked (not, I think, disadvantageously), that the accumulation of immense properties in the hands of individuals is not common. The vast majority of the estates for which revenue is paid direct to the Government are *petty* properties, and the larger ones are almost all so charged with subordinate tenures of a more or less permanent character, as often to leave the so-called owner with only a moderate annuity.

8. The illegal levies by the zemindars may be divided into two classes—illegal transit and market taxes levied from the general public, and illegal cesses levied from the agricultural ryots by their landlords, in addition to the legal rents. In the original settlement, certain items classed under the general name of “sayer” were included in the assets of the zemindars; dues levied on produce brought to market, tolls taken on boats passing along rivers, or on goods landed and shipped, and so on; but these practices having led to abuse, it was determined to abolish and prohibit them all, and to give compensation to the zemindars who had profited by them. A Regulation for this purpose was passed in 1797, and thenceforward all such collections were strictly prohibited. All dues on transit and purchase and sale were declared to be illegal, and forbidden under penalty of confiscation of the estates of those who contravened the law. It was specially enacted that no dues whatever were to be levied on markets, saving only regular monthly or annual rents for shops; and for the market dues, as well as for all other collections, full compensation was given. Yet it turns out that these enactments have been wholly set at defiance; dues on goods brought for sale are levied in almost every market in the country. One case has come to light near Calcutta, where the proprietor to this day draws from Government annual compensation for his abolished market dues, but has only moved his market to a short distance, and there levies the dues just the same.

I. The agricultural cesses consist of various dues and charges levied from the ryots, in addition to the regular rent, and generally in proportion to the rent. The permanent settlement regulations positively prohibited all such duties, strictly confining the zemindars to the customary rent proper; but in this, as in other things, these laws have been wholly set at defiance in modern times. The modern zemindar taxes his ryots for every extravagance or necessity that circumstances may

Administration
Report, 1871-72,
page 170.

1873, 1872-73,
page 21.

suggest, as his predecessors taxed them in the past. He will tax them for the support of his agents of various kinds and degrees; for the payment of his income tax and his postal cess; for the purchase of an elephant for his own use; for the cost of the stationery of his establishment; for the cost of printing the forms of his rent receipts; for the payment of his lawyers. The milkman gives his milk; the oilman his oil; the weaver his clothes; the confectioner his sweetmeats; the fisherman his fish. The zemindar levies benevolences from his ryots for a festival, for a religious ceremony, for a birth, for a marriage; he exacts fees from them on all change of their holdings, on the exchange of leases and agreements, and on all transfers and sales; he imposes a fine on them when he settles their petty disputes, and when the police or when the magistrate visits his estates; he levies blackmail on them when social scandals transpire, or when an offence or an affray is committed; he establishes his private pound near his cutcherry, and realises a fine for every head of cattle that is caught trespassing on the ryots' crops. The *abwabs*, as these illegal cesses are called, pervade the whole zemindari system. In every zemindari there is a naib; under the naib there are *gomashtas*; under the *gomashta* there are *piyadas*, or peons. The naib exacts a *hisubana*, or perquisite for adjusting accounts, annually. The naibs and *gomashtas* take their share in the regular *abwabs*; they have their little *abwabs* of their own. The naib occasionally indulges in an ominous raid in the mofussil; one rupee is exacted from every ryot who has a rental, as he comes to proffer his respects. Collecting peons, when they are sent to summon ryots to the landlord's cutcherry, exact from them daily four or five annas as summons fees.

II. In most districts there are cesses peculiar to the district; in all districts it must be said that these exactions largely prevail. It has been found that they are really almost quite universal, the only difference being that in some places and in some estates they are levied in greater numbers and amount, and in less numbers and amount in others.

III. In Nuddea there is a small hamlet of ten or fifteen householders, men neither of substance nor yet of exceptional poverty. The zemindari *gomashtas* proceeded with their peons to this village during the inundation of 1871, and, apportioning on an average their requirements at three annas to every rupee of rental, demanded a benevolence of Rs. 54-2 as the sum of various kinds of *abwabs*. This amount was actually realised; yet the ryots did not complain. They never would have complained in this case had the zemindars allowed matters to stop at this point. But the zemindars ventured, within three or four days after the realisation of this amount, to impose another cess of forty rupees upon this petty village, as its contribution towards the marriage expenses of the daughter of one of their own number. Yet even in these straits the ryots exhausted every means of complying with the additional exaction. They sowed indigo for the planter, and they applied to him for assistance, but in vain; they besought their mahajun for the money, but fruitlessly, and only as a last resource petitioned the magistrate for redress.

IV. This case was especially reported by the Board of Revenue to Government. The Board observed: "The case seems to prove the

APP. XII.

ILLEGAL CESSSES.

Para. 8, contd.

APP. XII. unmerciful manner in which unauthorised cesses are demanded; the fear of the oppressed ryots, which induces them to comply with oppressive demands, of the illegality of which they may be aware, and the extreme difficulty of obtaining any adequate redress; and to show conclusively that some means should be afforded to the Government to check the rapacity of the zemindars and their agents, and to afford protection to their victims."

ILLEGAL CESSSES.

Para. 8, contd.

V. It has been the ryots' immemorial practice to pay these *abwabs*, and they pay accordingly; they pay because they have always paid, and because in the long run it involves less trouble to pay than to refuse. Upon a full review of the matter, the Lieutenant-Governor came to the conclusion that the system of these exactions was now in such universal vogue, was so deeply rooted, and so many social relations depended thereon, that it became a question whether it was desirable that Government should, by any general or very stringent measures, interfere to put a stop to them. It was at the same time made thoroughly clear that the Government, in hesitating to adopt severe or extreme measures, in no degree recognised or legalised those cesses. Illegal, irrecoverable by law, and prohibited by law, they must, it was said, remain; but it was deemed that it would perhaps be better, under all the circumstances, not to interfere, except in extreme cases. As the people get better protected, better educated, and better able to understand and protect their own rights and position, things would, it was felt, no doubt to some extent, adjust themselves. At present the people certainly prefer to pay moderate cesses to an enhancement of rent.

VI. In Orissa; however, the case is in many respects different and worse than it is in Bengal. Not only has it been established that illegal exactions have there been carried to a monstrous point, but the inquiries on this question, and the separate inquiry regarding remissions of land revenue specifically granted by Government on account of the famine of 1866, on the express condition that the rents of the ryots should also be remitted, show conclusively that, as a rule, the zemindars did not give the benefit of either the remissions or the advances they received to the ryots, but continued to collect their rents. Further, in some parts of Orissa at any rate, the Government settlement made direct with the hereditary ryots has been utterly set at nought; the Government leases have been taken from the ryots; the rents fixed by the Government officers have been increased many fold; and the main object of the extension of the settlement for a fresh term of thirty years after the famine, *viz.*, permitting the ryots to hold on at the old settlement rates, has been utterly defeated.

VII. For the rest, the papers showed most conclusively, in the Lieutenant-Governor's opinion, the utter failure of the system adopted in Orissa of making a minute and careful settlement of the rights of all parties, and then leaving the settlement to itself without the supervision of Government, and the machinery of tehsildars, canoongoes, and village accountants, by which such settlements are worked and carried out in other provinces. Nowhere was the settlement more carefully made, or made in greater detail, than in Orissa; perhaps nowhere were the status and privileges of the ryots so well protected in theory as in Orissa; yet we find, after the expiry of a thirty-years' settlement, during

which no annual or periodical papers were filed, and the settlement records were in no way carried out, that this whole system of record and protection have utterly collapsed, the records have become waste-paper, and the ryots, supposed to be so well protected, are among the most oppressed in India. The papers brought home to the Lieutenant-Governor most strongly that, so far at least, the settlement should be immediately revised, * * and that it should be revised at the expense of the zemindars, as the Commissioner proposed.

—
ZEMINDARS'
POWERS UNDER
THE LAW.
PART II.

9.—RENT LAWS AND ENHANCEMENT OF RENT.

I. Administration Report, 1872-73.—The general provisions of the Regulations of 1793 were in favour of the tenant. The theory of the permanent settlement was to give to all under-holders, down to the ryots, the same security of tenure as against the zemindars which the zemindar had against the Government. Sub-holders of talooks and other divisions under the zemindars were recognised and protected in their holding, subject to the payment of the established dues. As respects the ryots, the main provisions were these: all extra cesses and exactions were abolished, and the zemindars were required to specify in writing the original rent payable by each ryot at the pergunnah or established rates. If any dispute arose regarding the rates to be so entered, the question was to be "determined in the civil court of the zillah in which the lands were situated, according to the rates established in the pergunnah for lands of the same description and quality as those respecting which the dispute arose." It was further provided that no zemindar should have power to cancel the leases, except on the ground that they had been obtained by collusion at rates below the established rates, and that the resident ryots should always be entitled to renew pottahs at these rates. In fact the fixity of tenure and fixity of rent rates were secured to the ryots by law. It has already been pointed out that provision was made for canoongoes and putwaries, an object of whose appointment was declared to be "to prevent oppression of the persons paying rent." On behalf of the ryots it was a record of rights only that was wanting. The status that was designed for the tenantry was, however, much impaired, and in great part destroyed, by the great powers subsequently given to zemindars under the old *hufium* (seventh) and *punjum* (fifth) Regulations, with a view to enable them to realize their rents.

Administrative
Report, 1872

Zemindars' powers
under the
law.

II. Mr. Buckland, Commissioner of Burdwan, 1872-73.—From the expressions as to public opinion which will be found in the district reports, I think that it is shown that the trial of rent suits in the civil courts is a mistake. I think that it was too great and sudden a transition from the other extreme of *hufium* and *punjum*, which, once household words, will soon have to be explained to the increasing generation of ryots. Under the *hufium* process (Regulation VII of 1793, the person of the ryot could be seized; under the *punjum* process (Regulation V of 1812) his property could be distrained; and in either case the proceedings commenced by a strong presumption, equivalent to a knock-down blow, against the ryot. It may not be generally known that the Regulation of 1799 was enacted in order to save the

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ZEMINDARS'
POWERS UNDER
THE LAW.

Para. 9, contd.

settlement, the existence of which was then imperilled by the excessive independence which the ryots enjoyed; for, although it is now the custom to say that the rights of the ryots were not properly protected in the perpetual settlement, it turned out at the time that they could take such good care of their own rights, that the zemindars could not collect their rents from them until the Government came to the rescue of the zemindar, and made the ryots liable to arrest for default of payment of rent. It is, I fear, a mistake to have gone so far and so quickly in the opposite direction; and I have looked in vain in the published records of the Bengal Legislative Council debates for any sufficient cause there shown for the substitution of the ordinary form of suit for the old summary suit. From the very nature of the case, where almost every thing depends upon a ripening crop, a summary trial is necessary, or the only thing worth fighting for will have vanished.

Commissioners'
Reports, 1872-73,
page 1.

III. *Lieutenant-Governor*.—Mr. Buckland recites the history and present situation of the Rent Law. His Honor fears that it is the fact that the status designed for the ryot by the Regulation of 1793 was much impaired, and in great part destroyed, by the great powers subsequently given to the zemindars under the old *kustum* and *punjum* regulations, with a view to enable them to realise their rents. As Mr. Buckland truly describes the process under the law of 1799 and that of 1812, the proceedings began in both cases by a strong presumption, equivalent to a knock-down blow against the ryot. The law of 1859 reduced the powers exercised by the zemindars themselves, while it increased the grounds of enhancement, and afforded the remedy of a summary process before Deputy Collectors, who were, however, often very insufficiently qualified. Rent suits are now transferred to the civil courts; they are better tried, and the rights of the ryots are more respected than they were; but, on the other hand, there certainly seems now good ground of complaint that there is difficulty in quickly realising undisputed rents by legal process.

Report of Bengal Famine
Commission,
1866, Part III,
paras. 32-5.

10. I. Last in the scale come the ryots. There can be no doubt that it was the intention of Lord Cornwallis and his advisers to give to this class also the benefit of his famous settlement. Although it was not found possible, as at first intended, to record all individual rights, the clearly expressed provisions, that the zemindars should not take more from the ryots than the established rates of each *pergunnah*, and should not eject them, seem distinctly to confer on the ryots permanency of tenure and general fixity of payment. For seventy years the only ground of enhancement recognised by the Courts was, that particular ryots were paying rates exceptionally low and under the established and legal rates. Even as respects such ryots, the courts had held that possession at the same rate of rent for twenty years before the settlement gave a right to hold at that rate for ever, however low it might be; and Act X of 1859 has so far extended this right, that all who have held at the same rate since the settlement are entitled so to hold for ever. In theory, therefore, the ryot of the time of the permanent settlement has by law as permanent and fixed a tenure as the zemindar; and the law has further protected him against the difficulty of proving his holding by providing that, if he can prove a holding at a uniform rate for twenty years, he shall be presumed to have held from the settlement, unless the

Right of occupancy at a fixed
rent.

contrary be proved. But in practice there are several difficulties. APP. XII. The knowledge of a right to hold at fixed rates, in a country where till then no payments, superior or inferior, had been fixed beyond the reach of despotic interference, but slowly reached the lower classes of the people; the zemindars, themselves in those days highly assessed, as peace and prosperity increased the resources of the ryots, irregularly pressed either for increased rents or for various unauthorized extra cesses and benevolences, such as in India constantly crystallize into fixed payments, and many compromises were made under which they were bought off by somewhat increased payments. The holder of the most ancient tenure may any day find his fixity utterly destroyed by the exhibition in his zemindar's books of some small unexplained varieties in his actual payments in the time of his grandfather, fifty or sixty years ago. The case is also frequent in which holdings are declared variable, not because the rent is shown to have varied, but because the holder cannot give that amount of proof of twenty years' unvaried holding, which satisfies the local courts. So great is the unreliability of evidence, as it is taken in this country, that many judges consider oral evidence always worthless, and documentary evidence gradually worse. Except in the case of those men who have already successfully run the gauntlet of all the courts, it may be said that the most painful uncertainty exists, whether each man is proprietor of valuable land or a mere tenant. In some districts there are many ancient and valuable ryoti-tenures at fixed rates, but in other parts of the country all depends on the tendency of the litigation, much of which is yet, we fear, to come.

RIGHT OF OCCUPANCY AT A FIXED RENT.

Para. 10, contd.

II. The remaining class of rights is that of those ryots who have right of occupancy, but not right of holding at a permanent fixed rent. Till the passing of Act X of 1859, the only standard of enhancement for these men was that of the pergunnah rates, which had become extremely vague and ill-defined. By the last-mentioned enactment, the principle was introduced that these ryots should be liable to enhancement of rent on account of enhancement in the value of the produce of their lands, arising from causes other than their own industry and improvements. It has been ruled by the highest court that this entitles the zemindar to enhance in proportion to the increase in the market value of the staples of production; and the effect is, so far to put the ryot somewhat on the footing of a permanent holder on a fixed corn rent. If adequate machinery be provided for working out this principle, it will admit of a tenure beneficial to a considerable degree; and we think that such machinery should be provided something after the fashion in which the "fiars" prices are struck in Scotland.

Right of occupancy at pergunnah rates.

III. This, however, is not all. The old provision for enhancement to the rates payable by the same class of ryots, for lands of the same class, still remains as an additional instrument of enhancement, and the pergunnah rates having much fallen into desuetude, there is still much uncertainty, not yet fully dealt with judicially, on the question what constitutes a *class of ryots*; while the provision to save improvements effected by a man's own labour and money not being introduced into this clause of the law, it is still doubtful whether a man who by his own industry has converted barren land into first class garden land may be charged first class rates.

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RIGHT OF OCCU-
PANCY AT
PENGUNNAH
RATES.

Para. 10, contd.

IV. All these uncertainties are rendered doubly harassing by the farming system, under which the profit of the farmer largely depends on successful enhancement.

V. On the whole question we can only here say that the great necessity of Bengal is to render certain and definite the rights in the land, and thus to enable a man with money in his hand to deal confidently with some one person as the absolute owner of at least the *dominium utile* over the field which he wishes to buy. At present there are so many various interests, and so much uncertainty regarding all, that most dealings in land are a species of gambling, and comparatively few have an interest so complete and secure as to enable them to improve with prudence, if otherwise willing to do so.

11. At the time of the permanent settlement, when the rights of the ryots were destroyed, the blow was mitigated by the scantiness of the population compared to the land, which circumstance made it the interest of zemindars to attract ryots to their estates. In the present day, circumstances are reversed. In the Administration Report for 1871-72 it was observed as follows:—

Administration
Report, 1871-72.
Part I, page 35.

I. If we eliminate the exceptional tracts of hill, waste, marsh, and jungle, we shall find that the districts, and parts of districts in the plains, which are without special drawback, cannot average less than about 650 souls per square mile—say one person per acre of gross area. In the best districts we can hardly allow less than 25 per cent. for rivers and marshes, roads and village sites, and other areas for any reason unculturable or uncultivated. Say we have 75 per cent. of cultivation, or three-fourths of an acre per head; we may allow one-third of that for products other than the food of the population—oil-seeds and fibres, indigo and opium, and commercial exports of all kinds, including a large export of rice, as well as the dress and luxuries of the people of the country. The result will be that we can hardly have more than half an acre per head devoted to raising the food of the population. If this be compared with the average given to raise food by agriculture and grazing in England, and the quantity of food imported there, it will probably be found that, deficient as may be the Indian agriculture, it supports more people from the same breadth of cultivated land than any European countries.

II. On the other hand, this scantiness of the land, compared to the population, suggested the great social difficulties which may arise if population much further increases. * * *

III. No statement of occupations has yet been received, but one thing is very plain, *viz.*, the extraordinary absence of large towns. The population beyond Calcutta and the suburbs seems to be almost wholly rural. Patna has 159,000 people, and there are a few second-rate towns in Behar. In Bengal proper, the largest town is Dacca, 69,000. The supposed great city of Moorshedabad, the seat of the Nawab Nazim and his numerous followers, even including some outlying places not properly in the city, has only 46,000 souls; and there is not another town above 31,000, and scarcely a dozen averaging 20,000 each.

Rungpore, the capital of the great district of Rungpore, contains 6,100 souls, and Jessore 6,152; each of these districts having a population over two millions.

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—
Para. 13.

Mr. Beverley, in his account of the census of Bengal, observed that outside Calcutta and its suburbs there are probably not more than half a dozen towns with a population of 50,000 inhabitants; and even of these the boundaries sometimes include large rural tracts, and some of them might more justly be described as groups of villages formed into an union for municipal purposes, than as towns in the European sense of the word.

12. From these extracts it appears that population is pressing on the means of subsistence, with the necessary result of raising prices; and that it is pressing on the means of occupying land, with the result of multiplying competitors for cultivators' holdings; and these results of the growth of population conspire to enhance rents.

13. Respecting enhancement of rents, the following notices are extracted from the Administration Reports of the Bengal Government, and from those of Commissioners of divisions:—

1871-72—

I. (a). The mutiny led to one of those strange oscillations of Indian opinions which seem to occur periodically like the tides. By a very unintelligible concatenation of ideas, because the North-Western Provinces had been the chief scene of the sepoy mutiny, it was held by many that the civil administration of these provinces and of the Punjab, previously believed to be remarkably successful, must be bad. Many people thought that the mere fact that an institution obtained in those provinces, was enough to condemn it. Settlements of the land with small holders were declared to be open to every possible objection, and there was a great revival of the school which maintained the advantage of great landlords and absolute rights of property. In 1859 a very important Act for the regulation of the relations between landlord and tenant, based upon old principles, with some modern additions, was passed quietly enough, but soon after there sprung up a storm of opposition; it was denounced as confiscation of the rights of landlords; attempts were made to put upon it a construction which would have nullified all the protection it afforded to ryots; and it was not till after years of hot and angry discussion and keen litigation, that the highest court gave to it an authoritative construction, and settled the action of the courts into a course not unfavourable to the ryots who have means enough, or combination enough, to litigate.

Administration
Report, 1871-72,
Part I, page 48.

(b). In the south-eastern districts of the Delta, where, as in most districts of Bengal proper, the agricultural ryots are chiefly Mahomedans, it is the fashion, whenever a landlord quarrels with his tenants,

APP. XII. to stigmatize the latter as "Ferazees," a sect professing reformed tenets and doctrines of equality, and to attribute to their conduct a political character. * * * There is, however, no doubt that the people of these tidal districts are hot-blooded and pugnacious more than other Bengalees, and more given to the use of arms, which they possess in abundance. At the same time there is, the Lieutenant-Governor believes, no serious element of disaffection in their religion *per se*, though the Ferazee doctrines, which so many of them hold, might, in the event of serious agrarian questions, form a bond and rallying cry among them; and this part of the country is thus not without some elements of political anxiety. The Lieutenant-Governor has expressed his satisfaction that many landlords of these parts have found it to be their best policy to take a bonus from the better ryots (who are often prosperous and well-to-do), and to give them perpetual leases at fixed rents. The registration records show a very large creation of such tenures in these districts; and the Lieutenant-Governor trusts to this distribution of the rights of property upon a wide basis as the best conservative force, and the best security for peace and observance of the law.

Ibid., Part I,
page 23.

(c). The enhancement of rents has been alluded to as a cause of excitement in particular cases; but it may be said that the rights of enhancement, conferred on landlords by Act X of 1859, have not been the occasion of much serious excitement, or great social disturbance in these provinces, generally, in the past year. Of late years the courts have shown a tendency to scrutinize thoroughly the grounds of enhancement, and to watch the cases affecting great classes of ryots, who are individually unable to contest particular cases with zemindars on equal terms in respect of money and legal aid. And the zemindars of Bengal have not generally been very pushing in this respect. It was principally in connection with the indigo question that the planters of Bengal proper fought and lost the battle of an unlimited enhancement of the rents of the ryots possessed of a right of occupancy. The zemindars are most frequently content if they can get extra cesses and benevolences—illegal, but which the ryots certainly prefer to enhancement of rent. In Behar, where the rights of ryots are, it is believed, less respected than in Bengal, the indigo system has rather tended to keep down rents, as it did in Bengal, till the ryots refused to grow indigo on the old terms. An ordinary farmer of a village or group of villages, under the fashion prevailing on most great estates, makes it his sole business to exploit the rents; whereas an indigo-planter farms the village for the sake of the indigo, and generally leaves the rents alone, so long as the prescribed tale of indigo cultivation is maintained.

1872-73—

Administration.

II. (1). (a). Meantime the unsettled questions between landholders and ryots have been brought into prominence by what are known as the Pubna rent disturbances. This district, at the confluence of the Ganges and Brahmaputra, is one in which the ryots have some independence of character, and have of late acquired some knowledge of their rights. It appears that the zemindars had been in the habit of levying very heavy illegal cesses. More recently, probably alarmed by the inquiry into these

cesses, and foreseeing the effect of the obligation to return a statement of rents, by which they would be bound, in case the road cess (already in operation in the neighbouring districts, but not in Pubna) was extended to Pubna, the zemindars became anxious to consolidate the cesses with the rents, and to take the opportunity of obtaining at the same time a large increase of rent. But they had not served the legal notices of enhancement by which enhancement must be preceded, and legal means would be tedious, expensive, and difficult in these days, when the ryots of Eastern Bengal have learnt to unite for common action, and the courts have expounded the laws in a manner favourable to the ryots, for which the landholders were not prepared. In this dilemma they attempted to obtain their object by irregular and illegal pressure. Some of the more unscrupulous zemindars certainly put on much improper pressure of this kind, and attempted by this means to obtain very unfair, extortionate, and illegal documents, binding the ryots to pay largely increased rents, to pay all cesses imposed by Government, whether on the occupier or the owner, to surrender the right of occupancy in case of difference with the zemindar, and altogether to place themselves at the landlord's mercy. There can be no doubt that in this attempt to overrule the law, and obliterate the rights of the ryots, some of the zemindars acted very illegally, and that the first fault lay with them.

(b). But trade unions are an old institution in India, and local ryots' unions are common enough in Eastern Bengal. The ryots who were hard pressed by the worst zemindars, and who had nearly yielded, obtained the support of their fellows, who knew that their turn would come next, and a very extensive ryots' union was formed and rapidly spread. Then, as is so apt to happen in such cases, some of the men of the union committed themselves by breaking the peace and the law. There was a violent and threatening outbreak, of which of course many bad characters took advantage. The deeds of the rioters were enormously exaggerated; in reality, they did nothing of a very atrocious character, but there were serious breaches of the peace, a little plunder of property, and some old quarrels were worked off. There was no loss of life or very serious personal injury. But the landholder class was thoroughly alarmed, and terrible stories of the atrocities committed by an excited Jacqueire have been told all over Bengal, and partly believed in. * *

(c). The difficulties were enhanced by disputes as to measurement, which all over Bengal have always afforded a fertile source of quarrel between landlord and tenant, there being no uniform standard, and the local measuring rod varying from pergunnah to pergunnah and almost from village to village. In Pubna especially there is extreme diversity of measuring standards. All the zemindars were not equally bad, but there were undoubtedly some among them who resorted to illegal pressure, and strongly attempted illegal enhancement; in the cases where the shares were much sub-divided, also, especial oppression was practised, and the quarrels among the sharers themselves had not a little to do with the recent outbreaks. It is the practice for each sharer in an undivided estate to collect separately both rents and cesses, benevolences, &c., and in the estate in which the worst of the Pubna outbreaks occurred, one

APP. XII.

ENHANCEMENT
OF RENT.

Para. 13, contd.

Administration
Report, 1872-73,
Part III,
page 29.

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ENHANCEMENT
OF RENT.

Part. 13, contd.

shareholder had sublet his share to parties who were inimical to the other shareholder—a state of things which led to much dispute.

(d). *Rajshahye Division*.—There are several very noteworthy indications referred to in this report, that there is a rising among the ryots of a more independent spirit than previously existed, and of a better knowledge of their rights. A general impression is spreading in the country, that the hitherto undefined relation between landlord and tenant must be replaced by something better. The Lieutenant-Governor fully recognizes that we are progressing, and that things must gradually be put on a more defined footing. His Honour, however, considers that it may be doubtful whether legal definitions, and facility of recourse to courts, where rich men and lawyers prevail, will be altogether to the advantage of ryots in this country; and he does not desire to go too fast in substituting legal definitions for customary adjustments, so long as the parties get on fairly well one with another. His Honour would hope that Government officers may avail much by their influence in effecting adjustments among the parties themselves.

(e). *Orissa*.—Since the last few years a sort of antipathy has sprung up between the zemindar and his ryot, the endeavour of the former being always to keep the latter under subjection, and that of the latter to shake off the subjection. The ryot is convinced that in a court of justice the zemindar has no better privilege than himself—a belief which, though it compels him to seek redress in the courts, tends ultimately to his material injury. Whether he gains or loses the lawsuits, his sufferings in both cases are certain. The zemindar has many things in his favour to proceed in his own way; he would deprive the ryot of his arable lands, and harass him with lawsuits.

(2). As the country is subjected to inundation, the character of its soil is liable to frequent changes; a ryot, therefore, dares not take a jote at a high rate of rent for a fixed period, lest it be covered with sand by the inundation, and lose its productiveness. He is consequently a tenant-at-will throughout his life. The zemindar, on the other hand, is quite reluctant to give a pottah to a ryot, knowing that it would secure the interests of the latter against his own; and if he at all grants a pottah, he would never note therein the number of the land in the *bhouria*, or make any other specification of it; so that, even where a ryot possesses a pottah, his right is not secured by its vague terms, and in case of dispute the pottah becomes of no use to him. He cannot identify his land and establish his right to it by the production of the pottah. Therefore, whenever he becomes an object of displeasure to the zemindar, the latter either dispossesses him of his jote, or waits till his crops become ripe and fit for cutting, when he demands an exorbitant rent from him, which if not complied with, he appropriates the crop by the easy and simple process of distraint and sale. So the poor ryot is obliged to give up the crop, the produce of his labour and the hope of his future maintenance. Every year the zemindar measures his land by the *paddika*, which by the skill of his underlings would make a man measure more than it really is; and unless the poor ryot can please the man making the measurement, he is compelled to pay a rent higher than what would have been justly due from him if the measurement had been made justly. The zemindar is also a ryot's mahajan.

He will not suffer a ryot to borrow money or paddy from anybody but himself; so in every case he binds the ryot hand and foot, and the latter has no alternative but to submit himself to the zemindar's unjust claims.

APP. XII.

ENHANCEMENT
OF RENT.

Para. 13, contd.

(3). Although the rise of prices and the increase of trade have become sources of means to the ryot, yet the continual endeavour of the zemindar to squeeze him, and, in case of opposition, to harass him with lawsuits, have become great bars to his progress. During my winter tour of inspection, I have learnt that, in addition to the rent due from the ryot, the zemindar exacts from him cesses and *adwabs* of various kinds. The ryot unwillingly submits to these exactions for fear of being harassed by Act X suits—the easy mode of binding a ryot to subjection; so his position with respect to his landlord is quite helpless and unpleasant.

(4). No zemindar makes any endeavour to improve his zemindari; and as the demand for arable land has increased, he, instead of endeavouring to improve the lands which lie uncultivated, and make them fit for cultivation, only increases the rate of rent, or deprives one ryot of his land and gives it to another, whenever such opportunity presents itself.

1874-75—

III. (a). The rent laws (Acts X of 1859 and VIII of 1869) are commonly called the charters of the ryot. These enactments, indeed, left unchanged the ryots of the superior classes, the tenure-holders, and the sub-proprietors on the one hand, and the ryots of the lowest class and tenants-at-will on the other; but they raised up, intermediate between these two classes, a class of men with an occupancy status—that is, a class of men who, having held for twelve years or more, would not be liable to ejectment while they paid the rent, nor to enhancement of rent, save by decree of a court of justice. The effect of this rule, which has operated now for fifteen years, has, according to all accounts, been very great. Many experienced natives believe that the great majority of cultivators have acquired this occupancy status, and that the mere tenants-at-will are comparatively few. At first the zemindars either acquiesced in, or took no pains to prevent, this gradual change. And although some zemindars do insert provisions in the leases to prevent this status accruing to the tenants, still the majority do not, either because they acquiesce, or because they cease to resist what they regard as inevitable. The general consequence is, that the bulk of the ryots or cultivators have become much raised in position.

Administration
Report, 1874-75,
Part I, page 8.
Right of occu-
pancy.

(b). On the other hand, the rent laws, while doing so much for the status of the cultivators, did something also for the landlord, inasmuch as they asserted the principle that even from occupancy ryots he should be entitled to increase of rent under certain conditions. Of these conditions the most important was this, that the value of the produce, or the productive powers of the land, must have been increased otherwise than by the agency or at the expense of the ryot. Around this condition are clustered various questions which excite more lively interest than any other questions in Bengal at the present time. The growth of the export

Administration
Report, 1874-75,
Part I, page 13.

APP. XII. trade in agricultural produce has greatly augmented the profits of cultivation to the cultivator. The zemindar considers himself entitled to a share in this improved income, and he founds his demand on the condition above cited. The ryot hesitates to comply altogether; he will pay something additional, but he will not accept the arbitrament of the zemindar, and he is disposed to join issue at law. He will withhold the payment of rent altogether, if he cannot come to terms with the landlord.

ENHANCEMENT
OF RENT.

Para. 13, contd.

Ibid., Part I,
page 2.

(c). It is the fact that in some parts of Bengal, especially the eastern districts, the rent-paying powers of the land and the profits of the cultivation have much increased. The ryot is entitled to a large share in the benefit of this; the zemindar may also justly claim a share. The apportionment of the respective shares is the main cause of dispute.

(d). In many districts where these special circumstances of increase are not so readily demonstrable, it is reported that the zemindars would be unable to raise their rents if they were to try, as the ryots would contest the demands, and as the tendency of the decisions of the courts is thought to be adverse to such claims on the part of zemindars. This confirms the belief that the status of the ryot is improving, and that, whereas he was once the weaker, he is becoming the stronger party.

Ibid., Part I,
page 13.

(e). The zemindars see that the days of force and compulsion are passing away. Though they certainly regard themselves as something more than annuitants on the land, with fixed rents not to be enhanced as the profits of agriculture increase, and reasonably assert their right to a part of "the unearned increment," still they recognise the justice of allowing to the cultivator a good share in the increased produce of his toil, and the expediency of maintaining with their tenantry those friendly relations which ought to spring from community of interest in the soil. Though far from saying that they do anything like all that they ought, still they evince a growing disposition to help their tenantry in time of need. Such certainly is the inference to be drawn from the experience of the famine of 1874. In all parts of these provinces, signal instances of active and comprehensive beneficence and of munificent liberality for all sorts of useful objects on the part of the zemindar frequently occur, which would be deemed honourable to the landlord class in any country.

(f). It is true that more capital than at present ought to be laid out by the landlord class on the improvement of the land, &c.

1875-76—

Administration
Report, Part I,
1875-76, page 8.

IV. (a). The Act for the prevention of agrarian disturbances arms the Government with full power to prevent agrarian trouble, and the importance of this can hardly be over-estimated. Under the agrarian and rural circumstances of the country, moreover, the materials for such disputes are unfortunately so abundant, that many well-informed observers think that, notwithstanding the outward calm which now prevails, there are questions growing inwardly between landlords and tenants which must sooner or later burst forth in the shape of extensive quarrels,

unless some rules more definite than any which now exist shall be framed for the guidance of the authorities in the determination of rents.

(b). It is not possible, under the circumstances of Bengal, that rents should remain unchanged. If the value of land is to increase with the rise of prices and the improvement of produce, it follows that there must be a moderate and gradual augmentation of rent throughout the country from time to time, enough to satisfy the rights of the landlord, while leaving a clear and liberal margin of profit to the ryot. If the material resources of the nation are to grow and expand; if the culture of new staples is to flourish—the jute of yesterday, as it were, the tobacco of to-day, the flax of to-morrow; if the use of machinery is to spread, not only around capital cities, but also to the remote interiors; if, in short, agriculture is to advance, then concurrently some augmentation of rent is to be expected, equitable doubtless, and consistent with the maintenance of a stable and valuable occupancy status for the ryot, but still augmentation. The very law itself, by presenting the conditions under which rent may be enhanced, contemplates the possibility of such enhancement. It is too late now to recede from that position. Although the permanent settlement in Bengal did clearly imply protection for the tenantry, it did not promise¹ that their rents should never be enhanced. Such a promise would have involved a special and perpetual settlement with the ryots, which, in fact, was never attempted. Though the settlement virtually presented the established local rates (pergunnah rates) as guides, it yet did not stipulate that these rates should never be augmented as time went on. Nor were these local rates definitely ascertained and settled in the beginning; such an ascertainment would have amounted to an authoritative settlement of rents through the country—an operation which has not been, and doubtless will not be, undertaken.

(c). On every ground, then, there is a case for interposing by legislation while it can be dispassionately considered, and before the angry feelings on both sides shall become so inflamed as to render settlement almost impossible.

(d.) Meanwhile, as the best rule that could be framed in the absence of any guidance from the law, the High Court devised what is known as the rule of proportion. According to that, the new rent should bear the same proportion to the old value of the produce as the old rent bore to the old value of the produce, at the time when the rent was last fixed, or at some subsequent period which may be taken as a starting-point. But although this rule may be the only one that could be put forth without resorting to legislation, still it is essentially defective and cannot be easily worked. The whole area of contest is opened out, as to what the value of the old produce of the land really was; and even as to what the old rent really was, inasmuch as there are no village records filed in any public office, and unless the ryot possesses the old receipts, there is no one who holds a record save the zemindar, and his record would be disputed by the ryot. Further, it by no means follows that the old

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Para. 13, contd.

Ibid., page 9.

Administration
Report, 1875-76,
Part I, page 10.

Ibid., page 10.

¹ So spake Sir Richard Temple: for the different utterance of Sir George Campbell, see para. 9, section I.

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ENHANCEMENT
OF RENT.

Para. 13, contd.

rent was right, merely because it was the old rent. In the disputes which now arise, it will be alleged that the old rent was faulty, and that a new rent ought to be determined on better principles. But the rule of proportion in a great degree stereotypes and perpetuates whatever faults existed in the old rent.

(e). If, then, some better rule is to be found, how is it to be attained? In order to solve this question, I have for some time past been gathering opinions from all quarters, whence the best information might be obtainable, European and native, official and non-official; propositions and counter-propositions have been laid before Government; a mass of valuable ideas and suggestions has been collected.

(f). It is admitted that our proposals need not go beyond the class of occupancy ryots, leaving the non-occupancy class to the operation of the economic law of supply and demand. Probably, however, the occupancy category comprises the vast majority of the ryots.

(g). Two alternatives have, after the fullest consideration, been put forward, namely—*firstly*, to take the ordinary rent rates paid by the occupancy ryots or tenants-at-will, which may be regarded as representing the competitive rent for which the land might be let in open market, and to assume that as a standard for the occupancy ryot, allowing to him a favourable difference of 20 to 25 per cent. less; in other words, the rent of the occupancy ryot being made so much less than that of the non-occupancy ryot; or *secondly*, to calculate the rent of the occupancy ryot at a certain proportion of the value of the gross produce, the said proportion to be taken at from 15 to 25 per cent. of the said value. It is necessary to propose some margin within which the discretion of the court of justices may be exercised—the difference, less in favour of the occupancy ryot, to be from 20 to 25 per cent.; the proportion to be from 15 to 25 per cent., because in different parts of the country the customary rates of rent vary proportionally to the value of the produce, being lower in Northern and Eastern Bengal, and higher in Central and Western. It is also proposed that no claim for the reduction or abatement of existing rents shall be entertained in consequence of the rules.

Administration
Report, 1875-78,
Part I, page 11.

(h). The adoption of the non-occupancy rent as a standard for the occupancy rent has been advocated by the British Indian Association, the most important society of landlords in the country. It is remarkable, then, that an objection has been urged to the effect that the occupancy ryots are in many places already paying as much as, or more than, the non-occupancy. Well, but then the effect would be that the occupancy ryot would be by this rule protected altogether from enhancement, which protection he would enjoy on the express recommendation of the landlord.

(i). The prevailing opinion, among the many persons who have been consulted, is in favour of the rent being adjusted according to a proportion of the value of the gross produce taken at 15 to 25 per cent. But objections are made, to the effect that in some places the actual rent levied amounts to much more than 25 per cent., and in some places to less than 15. The answer is, that where it exceeds 25 per cent., the ryot is protected from further enhancement; and where it is less than 15, it must in reason be raised gradually to that proportion, in the

absence of specific agreement to the contrary; but the enhancement would be made, not necessarily at once, but by degrees, and from time to time. APP. XII.

(k). There is a question as to what should be regarded as the produce of the land for this purpose. By ordinary staples of our agriculture are of course meant rice, wheat, oil-seeds, jute-fibre. But besides these, there are certain products which require special tending and a certain outlay of capital on the part of the ryot, but which are, on the other hand, very valuable, such as sugarcane, mulberry, tobacco, and turmeric. It is thought most convenient to provide that these crops should be charged at rates double those of the ordinary staples. ENHANCEMENT OF RENT.
Para. 13, contd.

(l). There are certain tenure-holders intermediate between the zemindar and the ryots, who are not protected (as most tenure-holders are) either by the old regulations or by particular agreements. It has been proposed that their rents shall be fixed at rates 20 per cent. less than those of occupancy ryots.

(m).—Such are the principal features of the proposals, to the principles of which the assent of the Government of India has been obtained, and which I have embodied in a draft Bill, which has been transmitted, under existing rules, for the previous consideration of the Secretary of State. *Ibid.*, page 12.

V. (a). The argument for defining a new rule of enhancement of rent may be summed up thus: If there is to be enhancement in any class of cases, it virtually cannot be without a decree of court, because, although the rent of a tenant-at-will can be enhanced without such decree, some persons say that there is no such class existing any longer; they have all, or nearly all, become occupancy ryots. Those classes, such as korfa, ootbundi, and the like, are said to be not tenants at all, and to be little more than farm labourers, though this view of their status may be open to dispute. Probably, however, the great majority of ryots are in such a position that their rents cannot be enhanced without a decree of court. The existing law, no doubt, does lay down the circumstances under which there may be cases for enhancement, which are mentioned in section 18 of Act VIII of 1869. There are three circumstances under which cases arise for enhancement in the case of a ryot having a right of occupancy: (1) that the rate of rent paid by such ryots is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent; (2) that the value of the produce, or the productive powers of the land, have been increased otherwise than by the agency or at the expense of the ryot; (3) that the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him. But this law only lays down the circumstances under which enhancement of rent may be possible. Granted the three conditions which justify enhancement, still there is nothing in them whatever to show how the enhancement should be adjusted; there is nothing to show what are the data, what are the principles, on which the court should proceed in its adjudication. How is enhancement to be settled? As to that, there is positively nothing. The courts have elaborated what is called the rule of proportion—that rule which, in default of anything better, the highest tribunal has tried to frame as the best rule which could be made under the unsatisfactory *Ibid.*, Part II, page 10.

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OF RENT.

Para. 13, contd.

condition of the law. As above shown, the rule amounts to no rule whatever ; it positively bristles with difficulties from beginning to end.* * Then, of course, there is extreme difficulty in finding out what was the produce, and what was the rent, at some anterior period. It is not always easy to find these things out at the present day ; but it is infinitely more difficult to ascertain what these lands produced, and what was the rent, so many years ago, particularly, too, when the character of the cultivation of the land has changed. And it is this change of culture that so often causes disputes about rents ; it is perhaps the commonest ground for such disputes. Whereas the land grew common crops once, it bears superior staples now. But when and how the change began, whether it began since the time selected as a starting-point, can hardly be ascertained in the absence of any records filed in the collector's cutcherry. It is very well to take into consideration the produce of certain fields as they are now. But, to ascertain whether each field grew this or some other crop so many years ago, is an unsatisfactory undertaking in the face of conflicting statements. The Lieutenant-Governor is constrained to say, with the greatest respect to all the eminent authorities who tried to frame this rule, that it is unworkable, and is apt to become a trap for unwary litigants. If, then, this rule cannot work, what is to happen ? At present no decisions are given, so that the subordinate courts are perfectly puzzled, and when in doubt what to do, they decide to do nothing, and the disputes remain. The inevitable consequence of economic changes causes disputes to arise, and they are left unsettled, to the great detriment of landlords and tenants.

1876-77—

Administration
Report, 1876-77,
Part I, page 69.

VI. (a). The progress of the registration of perpetual leases has been watched by Government for some years with interest. Since 1871-72, when the number registered was only 47,181, it has rapidly extended without any check until the year which has just elapsed. Though the system appears to be gradually making its way in Central and Western Bengal, it can only be said to have taken deep root in Jessore and the south-eastern districts of Backergunge, Furreedpore, Noakhally, and Chittagong. During the past year there was a considerable increase in the 24-Pergunnahs, Nuddea, Moorsshedabad, Maldah, and Furreedpore, and a very large increase in Jessore.

3-77, Commis-
sioner's Report,
a. 74.

(b). *Dacca Division*.—The relationship between landlords and tenants has for some years past been such as to cause district authorities the gravest anxiety. The origin of this was of course the not unreasonable desire on the part of the zemindars that they should participate in the increased value of the produce of the land, which had been brought about by no special expenditure on the part of the ryots, either of labour or of capital. In this increased value, therefore, the zemindars had, in my (Commissioner's) opinion, a perfect right to share. No sooner, however, was the attempt made to enhance rents, than the ryots combined, not absolutely refusing to pay the enhanced rent claimed, but in many cases no rent at all.

14. We have seen that the income of the zemindars has increased from an increase of cultivation, from an enhancement of rents which is still in progress, and from the levy of illegal cesses and transit dues. Respecting the increased income from enhanced rents, Sir George Campbell observed in his Administration Report for 1871-72:—

APP. XII.
INCREASED
RENTAL OF BEN-
GAL.

Para 14.

“Inquiries in the course of the year have since brought out cases wherein the rental of permanently-settled estates is now 10, 15, 60, and even 120 times the Government revenue as assessed at the permanent settlement, although the officers who made the settlement in 1793 intended at that time to reserve for Government ten-elevenths, and to leave for the zemindars one-eleventh of the rental of the country.”

And again—

“The land revenue assessed in the last century, when the conditions of the country and the relative capabilities of different districts were vastly different from what they now are, bears no sort of proportion to the present value of the land. While in some places the revenue may still amount to a tolerable assessment, in others it amounts to no more than a very small quit-rent. The total rental of each estate may be to the revenue in the proportion of 3, 10, 50, or 100 times.”

And of the illegal cesses, Sir George Campbell incidentally remarked as follows:—

“If, say, an average charge of one per cent. on the rental of the ryot were made in order to open out local roads and water-channels in every direction, such a charge would be a mere flea-bite compared to the cesses which so many zemindars now levy.”

Whilst these enormous gains have accrued to the zemindars, the Board of Revenue, in 1873, in a memorandum on the Land Revenue of Bengal, asked the question—

“Who has reaped the benefit of the multiplied rental of the country?”

And answered it thus:—

“But the position of the money-lenders is more clearly defined. It is not too much to say that, while the ancestral landholders have, by their apathy and shortsightedness, fallen out of the race and lost their share of the growing wealth of the country, the money-lenders have by thriftiness, care, and a rapacity that could never have been tolerated by a less patient and indolent race, amassed such riches and such influence as to have become the most powerful class in the community. The condition of the ryot all over Bengal is that of hopeless indebtedness to his mahajun. The cultivation of the country is carried on upon advances made by them, and the well-being and comfort of the lower classes, and of a large portion of the higher classes also, is in their hands. Fortunately for all parties they are wise in their generation, and though they exact usury at rates unknown in other parts of the world, they know how to adjust their demands to the immediate

APP. XII. capacities of their debtors, and so avoid the catastrophe of a general
 bankruptcy, which would involve themselves. These men, it must
 INCREASED added, very commonly invest their accumulated gains in land
 RENTAL OF BEN. property, either by direct purchase, or by the foreclosure of mo
 GALS. gages, which are freely given by needy applicants for funds, as secur
 Para. 14, contd. for the repayment of loans. In this way the landholding class has be
 and is being, largely supplied with new blood, a process of undoubt
 benefit to the country at large. These self-made men bring fre
 energy and intelligence to bear upon the development of the resour
 of their properties, and are not addicted to the lazy and careless hat
 that lead to absenteeism and management by agents."

15. Summing up the information in this Appendix appears that—

I. In the permanently-settled districts of Bengal and Behar the land revenue had increased since the permanent settlement, up to 1871-72, by 66 lakhs, including 4.4 lakhs Behar, the famine in which province cost 6½ millions sterling which represents a yearly charge of 29 lakhs. The oppression of the ryots by the zemindars in Behar is not equalled in any other part of the territories under the Government Bengal.

II. From the valuations, for the road cess, of the income of owners and occupiers of land, the Bengal Government considered that the income of the land in the permanently settled districts is probably worth four or five times the revenue. This is exclusive of the illegal cesses and transactions and market dues levied by the zemindars, who tax the "ryots for every extravagance and necessity that circumstances may suggest."

III. Yet the zemindars, as a body, are not wealthy men though some of them are very rich. Too many of them are in embarrassed circumstances; and with all their illegal cesses and considerable enhancement of rents, the bulk of the zemindars are in debt, and, in their stead, money-lenders have benefited by the vastly improved income of the zemindars.

IV. The mass of the ryots are impoverished or in debt (with large exceptions, chiefly, however, in Eastern Bengal), and while this is their state, the question of enhancement of rents has assumed importance in the relations between zemindars and ryots.

V. Besides the difficulties which beset enhancement of rents, there are illegal cesses, respecting which the Board of Revenue testify to the "unmerciful manner in which unauthorized cesses are demanded," and express their conviction that "some means should be afforded to the Govern

ment to check the rapacity of the zemindars and their agents, and to afford protection to their victims." APP. XII.

VI. Outside Orissa, the Local Government accepted this state of things as inevitable. "As the people get better protected, better educated, and better able to understand and protect their own rights and position, things would, it was felt, no doubt to some extent, adjust themselves." Ninety years ago, the Bengal Government, in hastily framing a zemindary settlement, had faith that the zemindar would give his ryots pottahs which would fix their rents for ever; ninety years later, the Bengal Government was driven to hope that ryots would in time learn to resist the oppression of zemindars.

SUMMARY.
Para. 16, contd.

VII. With regard to the ryots in Orissa, however, the Bengal Government refused to be comforted with this hope: "Nowhere was the settlement more carefully made, or made in greater detail, than in Orissa; perhaps nowhere were the status and privileges of the ryots so well protected in theory as in Orissa: yet we find after the expiry of a thirty years' settlement, during which no annual or periodical papers were filed, and the settlement records were in no way carried out, that the whole system of record and protection have utterly collapsed, the records have become waste paper, and the ryots, supposed to be well protected, are among the most oppressed in India."

VIII. And so, varying somewhat the Board's enquiry, the question arises, what earthly good has come of a permanent settlement with zemindars instead of with the millions of proprietors whose rights were confiscated—in fact, though not in law or intent—by the authors of that settlement?

APPENDIX XIII.

ZEMINDARS AND RYOTS ;—THEIR CONDITION ACCORDING TO REPORTS FROM 1871 TO 1876.

APP. XIII. 1. From the time of the permanent settlement until 1872-73, the district officers in Bengal had no means, such as those afforded by the tehsildaree establishments in the other provinces and presidencies, of acquiring information about the interior of their districts; from the same cause, and from an inefficient police, their control over the interior of their districts was weak; and when the police was enlarged on the introduction of a revised constabulary in 1861, its utility to the district officer was lessened by the formation of the police "under a separate departmental control, which made it, in a great degree, independent of the magistracy." The Administration Report for 1871-72 noticed these several points as follows:—

I, page 24.

I. When the Government of Lord Cornwallis, abandoning the attempt to manage the land revenues in a more direct fashion, made them over to the zemindars, who were bound to pay their quotas into the collector's treasury, under penalty of sale of the estates confided to them, it became unnecessary to maintain the tehsildars, or native collectors, and establishments subordinate to them, who, in all other parts of India, collect the revenue in sub-divisions of the districts presided over by the European collectors. These native collectors have since become much more than mere tax-collectors, being in part, in their degree, administrators for very many purposes, just as the district collector is an administrator in his superior degree. In some respects, indeed, the tehsil establishments are the very backbone of our administration in most provinces. But they are to this day entirely absent in Bengal, and the circumstance has much detracted from our knowledge and means, and causes the want of an important link in the connection between the Government and the people. Many things done by tehsildars in other parts of India are not done at all, and many things which we should know through them we do not know. For many things which must be done there is a constant deputation of temporary deputy collectors, surveyors, and other occasional establishments, under a system which is very inconvenient and unsatisfactory in many respects.

II. At first the superior police administration also was entrusted to the Bengal zemindars, but it was soon found that they were unequal to this duty, and they were relieved of it. The obligations in regard to village police, keeping the peace, and the duties of watching and apprehending criminals, giving information, &c., attached to the holding of land, were continued; but a superior Government police was established, and the country was portioned out into police circles or thannas. This police long remained the only permanent mark and instrument of our rule in the interior of the Bengal districts, till, at a later period, subordinate judicial establishments were also pretty generally distributed. For executive purposes, however, the police are to this day the only permanent instruments available.

THE SECURITIES
PROVIDED IN
1793 FOR RYOTS'
PROTECTION SET
AT NAUGHT BY
ZEMINDAR.

Part 2.

Part 1, page 12.

2. This marked deficiency and weakness of the executive disabled the Government from fulfilling the obligations which it undertook at the permanent settlement to protect the ryots from the zemindars, who, till then, had been administrators as well as collectors of revenue, and whom the Government's acknowledgment in 1793 of its clear and distinct obligations to protect the ryots had placed in antagonism to the Government. On this point the Administration Report for 1871-72 observed:—

(1). Although at the time of the permanent settlement the collection of the land revenue was made over to the zemindars, and certain proprietary rights were assured to them, still, as the Lieutenant-Governor has several times had occasion to point out, nothing was farther from the intentions and acts of the governments of Lord Cornwallis and his immediate successors than to bestow on the zemindars an absolute property in the English sense, or "to abstain from interference between landlord and tenant," according to the phraseology of more modern days. This much any one who will take the trouble to read the Regulations of 1793 and the following years may see for himself. Those early Regulations were most careful in their provisions for restraining the zemindars and protecting the ryots.

All the securities
provided in 1793
for the ryots'
protection set at
naught by the
zemindar.

Ibid., pages 43-4.

(a). The zemindars were prohibited from ousting the ryots, or from taking rents in excess of the rates established by custom for each local division or pergunnah.

(b). They were bound to maintain the village accountant or putwaree, and to file full accounts of their demands and collections, with the canoongoes or superior accountants and record-keepers of sub-divisions under the collector, who was thus to have complete information of all revenue affairs, and easy means of reference in regard to all questions of rent, rates, &c.

(c). A general power of interference on behalf of ryots was reserved by express enactment, and a registry of all rights and obligations was to have been compiled. This last great work, however, was never carried out. Various attempts were made to organise a canoongoe establishment in different parts of the country; but there was difficulty about funds, and the arrangements were never completed, till, a generation later, a time came when different ideas prevailed, when canoongoes were abolished,

APP. XIII. putwarees discouraged—when zemindars were considered to be landlords in the English sense, and interference between landlord and tenant was said to be contrary to the laws of political economy.

THE SECURITIES
PROVIDED IN
1793 FOR RYOTS'
PROTECTION SET
AT NAUGHT BY
ZEMINDAR.

Para, 2, contd.

(d). Meantime, it has also become, in most instances, quite impossible to use the zemindars as administrative instruments. Most of the original zemindars failed to pay, and their estates were sold and split up.

(e). By the operation of the Hindu and Mahomedan laws of inheritance, and a vast system of sub-infendation, the rights in the land have come to be held by many sharers, and in many gradations of over and under holders; and, as mere property, those divided rights are held, in very many cases, by speculators, women, children, and others, from whom no administrative help could be expected.

(f). It may be said, too, that while there has been a general tendency to insist upon, and indeed exaggerate, the rights and privileges conferred on landholders by the permanent settlement, there has been, at the same time, an equal disposition to forget, evade, and ignore the terms, conditions, and obligations attached to those rights and privileges by the very Regulations which conferred or confirmed them. The idea of property has become stronger and stronger, and the idea of obligation attached to the functions of landholders has become weaker and weaker. It may be said that every point about which there could be any doubt has been allowed to settle itself in favour of the landholder and against the public.

(g). Thus, then, it has happened that in the provinces which we have held the longest of any in India, we have less knowledge of, and familiarity with, the people than in any other province; that British authority is less brought home to the people; that the rich and strong are less restrained, and the poor and weak less protected, than elsewhere; and that we have infinitely less knowledge of statistical, agricultural, and other facts.

Part I, page 46.

II. The events of the mutiny necessarily caused things to be a good deal thrown back; and there were in those days great domestic evils to be coped with. It has been said that, in Bengal, the rich and powerful have been less restrained, and the poor less protected, than in other provinces; and up to that time this was so, in the most literal sense of the word. There was, in the interior of Bengal, a lawlessness and high-handed defiance of authority by people who took the law into their own hands by open violence, which would not have been tolerated for a moment in any other part of India. It required all the energies of the first Lieutenant-Governor to deal with these and other potent evils; and it may be said that the government of the second Lieutenant-Governor was a continued struggle with questions arising out of past lawlessness, and affecting important interests which suffered by the transition from an old-fashioned state of things to a rule of law and order. He succeeded in this task, and achieved a very lasting improvement, but he was, it is believed, wearied by the struggle, and retired before completing the usual term of office.

Ibid., page 46.

III. One of the most important results of the measures taken by the two first Bengal Lieutenant-Governors was the establishment of subdivisions of districts, in each of which an officer was placed with the powers of a magistrate and some other powers. The system has not

even yet been fully carried out in all districts, but in most districts it has been so, with the effect of very greatly reforming the habits of open lawlessness above mentioned. A Bengal sub-division is on the average perhaps about twice the size of the tehsil of other parts of India; but still the institution has sufficed to bring to the knowledge of the people of Bengal that there are courts for the redress of flagrant and open injuries, and so far, the hands of the district magistrates have been very greatly strengthened.

APP. XIII.
THE REIGN OF
MIGHT OVER
RIGHT.
Para. 3.

IV. The Lieutenant-Governor ventures to think, however, that in the sub-divisional and other arrangements hitherto subsisting, too great prominence has been given to judicial, and too little to executive, considerations. The sub-divisional officers have no executive establishments whatever, and no authority over the police; they have been little more than local judges of petty criminal courts; and, latterly, they have been so much tied down by treasury and sedentary duties of various kinds, that it has been scarcely possible for them to make those inquiries on the scene of crimes and other serious occurrences by which the benefit of a local magistracy is chiefly felt.

Part 1, page 47.

V. Courts, both civil and criminal, are now pretty generally spread over the country (though, even now, there are but few, compared to the greatness of the population); and if courts could do everything, the deficiency would not be so great. But the Lieutenant-Governor has had too much experience of, and practice in, our courts, to be very confident that what the people think justice is always secured. It is the fashion among Englishmen to suppose that everything must be right which is done under the forms of law; but it may be that our courts are sometimes Juggernauts, crushing those who fall under their relentless wheels as they follow the course traced out for them by law and rule. The appetite for an excessive legal technicality grows rapidly in India; and it may be that the rich man, with troops of lawyers at his back, still sometimes oppresses the poor as much as when he operated with troops of clubmen.

Ibid., page 47.

VI. About the same time as the increase of sub-divisions after the mutiny, a change took place, which greatly detracted from the executive authority of the district magistrates. Under Lord Canning's government it was determined to reform and re-organise the police all over India and, under a new police law, the force still known as the new police was organised with a good deal of military forms in its composition, and under a departmental control, which made it to a great degree independent of the magistracy. In other parts of India the magistrate-collector had still revenue and executive establishments to fall back upon; but in Bengal, where he had none such, loss of authority over the police meant loss of almost all executive authority, or, at any rate, of all executive instruments. As departments were multiplied, and more and more masters put over him, the magistrate-collector of a district became more of a drudge and less of a master than is desirable in a country where personal authority must always go for much.

Ibid., page 47.

3. Thus, whereas, in 1793, the Government bound itself to the ryots by pledges of protection as solemn as the engagements not to increase the rents of the zemindars, from that year to 1856 a weak executive, with a police not worthy of

APP. XIII. the name, was powerless to afford that protection, and, in consequence, that period was one of lawlessness, in which the strong oppressed the weak—but with one cause less for oppression during that time than in the present day, *viz.*, an absence of the great rise of prices since 1856, which has created the subsequent difficulties that beset an enhancement of rents. Since 1856, the brute power of might over right has been curbed, but the reign of law, which has accompanied the restoration of order, has also enabled zemindars to substitute for brute force the power of the rich to oppress the poor through expensive litigation, which often is ruinous to the latter, even when they succeed in the courts.

THE REIGN OF
MIGHT OVER
RIGHT.

Para. 3, contd.

Condition of
zemindars in
Bengal.

4. But among the visions which floated in the benevolent mind of Lord Cornwallis was that of rich landed proprietors, who would protect their tenants, help them in improvements, in their ordinary exigencies of cultivation, and in seasons of adversity. The testimony, in the Administration Reports, to the character and condition of the zemindars of Bengal is as follows:—

Part II, page 97.

Zemindars give
no help to the
police.

I. 1872-73.—While the village watch is thus inefficient, the complaint is universal that the zemindars give the regular police no help. The Lieutenant-Governor has caused them all to be formally and fully warned of what the new Criminal Procedure Code requires of them; and it will now rest chiefly with magistrates to see that the obligations imposed by the law are duly fulfilled.

page 73.

... relatively
estates in
the immense
territories under
Bengal Govern-
ment.

II. (a). 1872-73.—In 38 districts of Bengal proper and Behar, out of a total number of 154,200 estates at present borne on the public books, 533, or 3·4 per cent., only are great properties, with an area of 20,000 acres and upwards; 15,747, or 10·21 per cent., range from 500 to 20,000 acres in area; while the number of estates which fell short of 500 acres is no less than 137,920, or 89·44 per cent. of the whole. In the district of Sylhet, with its 53,368 small estates, 556 medium, and 14 large estates, the original settlement was nearly ryotwari; and in that of Chittagong, with its 1 large, 671 medium, and 3,577 small estates, special causes have produced the great disproportion observable between the number of large and small estates upon the roll; but in other parts a large number of petty estates shown in the list owe their separate existence to the causes already mentioned. In the Behar districts, where, next to Sylhet and Chittagong, the disproportion under notice is most remarkable, a large proportion of the estates seem to have been from the first comparatively insignificant in size, while there were, and are, some extremely large estates in that province. Subsequent partitions have contributed greatly to crowd the revenue rolls of these districts with petty estates. It must be explained, however, that in all districts a large proportion of the petty estates are resumed rent-free tenures of a petty character settled with the holders.

Sub-division is
in progress.

(b). 1876-77.—The effect of the laws of partition in multiplying estates in Behar is again very marked, the numbers on the rent-roll

having risen from 37,619 to 39,781 during the year. In Tirhoot alone partition added 1,438 estates to the rent-roll. Mr. Worsley explains that the indigo (ticcadar) system is largely to blame for this. A shareholder leases his share to a factory; the factory endeavours to seize all the *zerat*, and the other shareholders are driven to partition in self-defence. In 1850 there were only 5,069 estates on the Tirhoot rent-roll; in 1860, only 6,342; but in 1875 there were 15,117. In Mozufferpore there are now 10,815, and 6,767 in Durbungah; 2,052 estates in the former district paying only Rs. 4,504 Government revenue between them. In Durbungah upwards of 50,000 owners have applied for registration under the new Act. These figures show the remarkable extent to which the sub-division of estates has been carried out, and there is every prospect of the process being continued. One effect of this separation of shares is to increase materially the work of the treasury establishments; the number of separate payments on account of land revenue, road cess, and other dues being now something enormous.

APP. XIII.

CONDITION OF
ZEMINDARS IN
BENGAL.

Para. 4, contd.

Part I, pages
14-15.Landlord class,
as a whole, is
far from rich;
many authori-
ties believe
that it is mostly
really poor.

III. (a). 1874-75.—It is true that more capital than at present ought to be laid out by the landlord class on the improvement of the land, though notable instances have occurred, and may yet occur, of combined action on the part of zemindars for the execution of drainage projects. But it is also to be remembered that though many zemindars are wealthy, still the landlord class, as a whole, is far from being rich, and by many authorities is believed to be, for the most part, really poor. They have numerous relations and retainers wholly dependent on them. The joint undivided family system, and many social usages, compel them to incur heavy expenses not obvious to ordinary European observers.

(b). 1874-75.—The division of the title and ownership of the land, if not of the land itself, equally among brothers by the Hindu law of inheritance, constantly augments the number of small landlords without means or resources. Indeed, from various causes, the sub-division of the ownership of land throughout the country is becoming remarkably great. Probably the original idea of Hindu legislators was this, that brethren would dwell together, subsisting jointly on the undivided proceeds of the ancestral estate; but as society advances, the tendency must be for each member of the family to separate off his share, and to establish himself independently. And although the Bengalees still evince a more than ordinary capacity for the joint undivided family existence, which capacity forms an interesting and amiable feature in their national character, still the natural tendency towards partition of lands and rights according to inherited shares has long asserted itself among them, and will probably assert itself more and more. Hitherto the law of partition (*butwara*) framed in early times (1814) has been, in many respects, cumbersome and tedious. Its simplification (which, in justice to all concerned, is being undertaken by the legislature) must have the effect of facilitating sub-division.

(c). 1874-75.—Again, there is the process known as 'sub-infeudation,' which may be taken to comprise leases of all kinds, permanent and temporary, and which in many districts has developed itself greatly, and in some districts, such as Chittagong, to an extent so extraordinarily great, as to cause a marked social change. The permanent leaseholders do not, so far as the ryots are concerned, differ essentially from zemindars,

APP. XIII. In such cases the zemindar becomes a nominal landlord, with a very limited income; though there are instances of great zemindars, with estates of territorial size, who let out their lands on leases, and yet maintain the status and discharge the responsibility of landlords. The temporary leaseholders, however, are worse than zemindars from the ryots' point of view. Having no abiding interest in the land, they may be tempted to resort to extortion, and are often much complained of; indeed, a portion of the agrarian troubles which have occurred at various times in Bengal is traceable and attributable to temporary leases.

CONDITION OF
ZEMINDARS IN
BENGAL.

Para. 4, contd.

(d). 1874-75.—It is not found that absenteeism is disadvantageously prevalent in Bengal. The great majority of zemindars live on, or near their estates; clusters of well-built mansions are to be found in the interior of most districts, where cousinhoods or brotherhoods of zemindars reside.

Pages 38-9.

IV. 1875-76 (a).—In most parts of Eastern and North-Eastern Bengal, indeed, the land-revenue equals only a very small portion of the rental, and the prosperity of the landowning class would be quite extraordinary, were it not for the sub-infeudation, or, in other words, the division of the rent payable by the cultivator between the proprietor and several classes of sub-proprietors. In Central and Western Bengal the landlords are less prosperous.

In other words, the Government, by withholding the large famine relief outlay, could have broken the permanent settlement, without breaking faith with the zemindars.

(b).—The fiscal advantages of this settlement were most severely tested during the famine of 1874, when the revenue was collected without any postponement, or remission, or default, or any failure whatever. Without the relief afforded by Government to the famishing people, there must have been some serious failures in the land revenue, and (what would have been a very great evil) some extensive transfers of landed property, and ruin of old families. One counterbalancing advantage, then, of the heavy relief expenditure incurred by Government was this, that the great interests pertaining to the land revenue and to the land were preserved.

5. The account may be continued from the Annual Administration Reports of Commissioners of Divisions, which on their present plan were begun with those for 1872-73, and from the Government Resolutions passed on those Reports.

I.—PRESIDENCY DIVISION—

Page 119.

(a). 1872-73.—During the year the conduct of zemindars was, on the whole, good throughout the division; though there were, of course, some instances of complicity in riots, neglect to give information of heinous cases to the police, &c. I cannot, however, say that, as a rule, they have any great sympathy with their ryots, except in so far as the collection of rents is concerned. Indeed, instances of landlords actively exerting themselves to effect improvements in the condition of the tenantry, or undertaking works of public utility within their estates, are rare. But this is scarcely to be wondered at, as the present reign of law and system has done much to destroy the friendly feeling that used to exist, even though the zemindars exercised somewhat feudal power, and to substitute for it continual lawsuits to try and establish the legal rights of

property. [The report closes with mention of two excellent landlords, one a European, and of two others, of whom one built a pukka house for a dispensary, and the other had kept up a dispensary for 20 years.]

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BURDWAN
DIVISION.

Para, 5, contd.

(b). *Jessore. 1875-76.*—On every side there are the marks of moral and material progress. It must be admitted, however, that the zemindars, taken as a body, are not in a prosperous or flourishing state. A few of the distinguished houses have been utterly ruined, while others are in a state of rapid decay. This sad state has resulted partly from their own acts, and partly from other causes. The laws of inheritance lead to the rapid multiplication of shares in joint property. An imaginary estate which yielded a handsome income to the original owner is but a moderate competence to his six successors, and will be but a pittance to, say, 36 grandchildren. The present management of the property, however, requires the consent of the six owners, who are suspicious of each other, and can agree to nothing. Mismanagement results, and, sooner or later, ruin is inevitable. It is generally accelerated by habits of extravagance. Family pride, bad advisers, and priestly influence counsel the maintenance of a scale of expenditure which, consistent enough with the means of the original owner, is altogether beyond the competence of his successors.

(c). *1876-77.*—The conduct of the zemindars has, with few exceptions, been worthy of praise. There were no serious quarrels with tenants in any district. In Nuddea, the zemindars have shown great interest in education and in the future of the Kishnaghur College. * * Messrs. Sibbald, P. Smith, A. Hills, Macnaughten, Jones, and Sherriff are specially noticed as good landlords. In Moorshedabad, Rao Jogendro Narain Rai, of Lalgola, is distinguished for charity to the poor and kindness to his tenantry; while the name of Maharani Surnomoyee stands foremost in Bengal for works of charity.

(d). *1876-77.*—In Nuddea it is stated that the people have been generally quiet, and that there have been but few instances of violent disputes either between zemindars amongst themselves or between zemindars and ryots. Such disputes as occur among the zemindars themselves have their origin, for the most part, in conflicting claims regarding shares, or in connection with indigo-planting. The disputes with ryots usually have reference to rents and *abwabs*; and these, it is correctly noticed, will never cease till the pernicious practice is abandoned of paying mere nominal salaries to zemindari servants. The larger zemindars in the Bongong and Kooshtea sub-divisions are for the most part non-residents, but in other parts of the district the zemindars generally live on their estates. Many properties have become much sub-divided, and it is said that their owners are on the highway to ruin, since they cannot forget that they are zemindars, and postpone, so far as they can, the evil day when they and their families must work for their subsistence. The subject of education has generally received the greatest support from the zemindars of the district.

II.—BURDWAN DIVISION—

(a). *The division generally. 1872-73.*—Among the native zemindars who have been distinguished for active benevolence and liberality, the

APP. XIII. Commissioner notices Baboo Joykisen Mookerjee in Hooghly, Baboo Nobin Chunder Nag in Midnapore, Baboo Radhabullub Singh of Kuncheakoli, Baboo Damoodur Singh of Maliara in Bancoorah, and Baboo Ramrunjunj Chuckerberty of Heliampore in Beerbhoom.

BURDWAN
DIVISION.
Para. 5, contd.

1875-76.—The Lieutenant-Governor observes with pleasure that amicable arrangements exist between landlords and tenants in the Bankoora district, and that Baboos Radhabullub Singh Deo, Damoodur Singh, and the Banerjees of Ajudhya are specially commended among the resident landlords of the district for their liberality. The Maharanee of Burdwan and Rajah Jotindro Mohun Tagore are highly spoken of by the Collector of Midnapore as animated by a genuine desire to do their duty to their tenantry, and spend money on drainage and improvements. (In the report for 1876-77 the former is mentioned as the best proprietor in Midnapore.) Messrs. Watson and Co. are reported to be "strict and unsympathetic landlords, but able, and on the whole just."

1876-77.—The relations between landlord and tenant are described as amicable, except in the district of Midnapore, where the pressure of the rent question has made itself generally felt.

(b). *Bancoorah*. 1872-73.—The inhabitants of the district are, generally speaking, poor. The Collector attributes this very much to landlord absenteeism, and to the system of letting and sub-letting in putni tenure, which so generally prevails here. The large amount of jungle also tends to keep in existence a very poor class of people.

(c). *Midnapore*. 1872-73.—Allowing for the large area of jungle mehals, Midnapore may be reckoned a very heavily assessed district; but it is worthy of remark that the only portion of the district where the old families hold up their heads at all is where the land revenue is heaviest. Those where it is lightest, probably owing to the extravagant habits which pecuniary ease afforded, are most inextricably in debt.

(d). *Burdwan*. 1875-76.—The practice of employing budmashes as nugdees, and of screening these budmashes when they commit dacoities or thefts in the neighbourhood, is far too prevalent amongst the landholders of this district. The relations between landlord and tenant are on the whole good in this district, but recovery of rents is very difficult.

III.—RAJSHAHYE DIVISION—

(a). *General*. 1872-73.—The Lieutenant-Governor regrets that, upon the whole, he is not able to notice favourably the conduct of the zemindars of the division. One, however, was distinguished for a very liberal school endowment at Rampore Beauleah, and three others were mentioned as having been well spoken of by the Magistrates of their districts. "The Maharanee Surnomoyee is pre-eminent, as usual, for the efficient administration of her property."

(b). *Rajshahye*. 1872-73.—Although there has been an increase in the number of notices of enhancement issued to the extent of 50 per cent., the present number, 234, is very trifling when compared with the number of cultivators in the district. The number of notices of relinquishment of cultivation has risen from 180 to 431. I find that the ryots in question are principally those who are under new proprietors, especially new putnidars. New brooms sweep clean, and putnidars are especially

likely to recoup themselves as soon as possible for the premium they have paid; in fact it may be said that in letting estates under this system in perpetuity, the landholder is really discounting future cesses, which he leaves the putnidar to realise. Beyond these cases, there are at present, happily, but few disputes between landlord and tenant.

I learn that illegal exactions are less resorted to than formerly, and that the measurement of holdings by the zemindars is on the increase. The amount of land at present held by the ryots on easy terms, the real area or productive power of the land being concealed by them, is very large; and the zemindars are likely to find this legal mode of enhancement as remunerative as the exaction of cesses, though more troublesome in the first instance.

1875-76.—The Collector writes: “The zemindars of this district are much above the average in intelligence, and, I think I may say, in integrity.”

IV.—DACCA DIVISION—

(a). *General.* 1872-73.—For two districts so intimately connected with each other as Dacca and Furreedpore, the difference between the condition of the land tenure is very remarkable. In the former, it is an extreme case to find two middlemen between the zemindar and the cultivator; while in the other, five are common, and in some zemindaries the number reaches seven. Backergunge is also much broken up into petty holdings by the system of sub-infeudation. In this district they have under the zemindars the talookdars, oosut talookdars, howladar, neem-howladar, meras kursadars, kursadars, and the burgadar. The zemindars, again, often buy the rights of one of the under-tenure holders—say the howladar—and the multiplicity of the interests held makes partition cases exceedingly difficult in this district.

1875-76.—Many of the large landholders in the Dacca division are absentees from their estates. The conduct of several zemindars is, however, brought favourably to the notice of Government by the district officers. The names of Nawab Abdool Gunnee, C.S.I., of his son, Kajah Ahsanoollah, and of Rajah Kali Narain Roy Chowdry, all of Dacca, are conspicuous, as usual, for their liberality and good behaviour as landlords. Among other names mentioned are three in the Mymensingh district, three in Furreedpore, the Rajah of Tipperah, and one zemindar in the Tipperah district.

1876-77.—In Furreedpore, as in most other districts of the division, the majority of the zemindars are non-resident. As regards their dealings with their ryots, there is not much to be said in their favour, their main object being to get as much out of their tenants as possible with the least possible amount of trouble to themselves.

(b). *Mymensingh.* 1872-73.—(1). The incidence of the land-revenue having been extremely light in Mymensingh, the present zemindars are for the most part representatives of the families who entered into engagements with the Government at the time of the permanent settlement. Two or three points appear worthy of notice with regard to the district zemindars in general. *First*, that though so large a proportion of the population are

APP. III. Mahomedans, only two or three of the large zemindars hold the Mahomedan faith; *secondly*, that a very considerable number of the present zemindars are women; *thirdly*, that though the existing zemindars mostly represent old families, a great many of them have attained their present position by adoption, and not by birth.

—
Dacca Division.

Para. 5, contd.

(2). As a body, the district zemindars are conservative, ignorant, and suspicious, trammelled by superstition and by social prejudices, and with much stronger ideas of their rights than of their duties. Under the circumstances of the case it was inevitable that this should be their general character. Living for the most part upon their own estates, and seldom enlarging their minds by travel, they have grown up within a narrow circle of ideas; and it is only of late years that their tenants have attempted any opposition to their wishes. At the same time, they can only be made amenable to influence judiciously exercised; and in one respect they contrast favourably with the zemindars of some districts, as they are not mere absentee annuitants upon the land, but live among their ryots, and generally take an active personal share in the management of their estates.

1875-76.—In Mymensingh the levy of the road cess since October last has brought to light the fact that the zemindars very generally levy a sum from their ryots in excess of what the law allows, probably with a view of partly recouping themselves for the loss of the cesses they used formerly to get, but which the ryots now refuse to pay. Even in an estate recently taken charge of by the Court of Wards, in which the owner was generally popular as not being in the habit of oppressing his ryots, the levy had been at *four times the legitimate demand*.

(c). *Dacca and Furreedpore*.—See above.

(d). *Backergunge*. 1876-77.—In Backergunge, with the exception of Nawab Ahsanollah, Baboo Mohini Mohun Doss, Rajendro Chunder Roy of Bowal, and Doorga Mohun Doss, a Dukhinshabazpore zemindar, all of whom largely assisted their ryots after the cyclone, not a single zemindar is mentioned as having taken the smallest interest in his tenantry, or done anything material to assist them over the time of trouble they have been recently passing through. The example thus set by the zemindars has been followed by the talookdars and howladars in the storm-affected tracts. Few have done anything to assist the ryots, many of whom would, but for our assistance, have fared badly indeed. Speaking generally of the conduct of the zemindars, Mr. Burton repeats what he said last year, that anything like an enlightened desire to improve their estates or improve the condition of their tenantry is wanting—an opinion which, I am sorry to say, my own experience of them leads me to adopt.

V.—CHITTAGONG DIVISION—

(a). *General*. 1872-73.—From the scattered position of their estates, the zemindars of Chittagong do not exercise great local influence or authority. In the Tipperah district they are mostly absentees, and do nothing for the district. [Two zemindars in Chittagong and one in Tipperah were, however, mentioned “for their liberality and public spirit.”]

(b). *Chittagong. 1876-77.*—The conduct of the zemindars is negative, as most of them are in debt, and therefore incapable of exerting an influence either for good or for evil.

APP. XIII.

BHAGULPORE
DIVISION.

Para. 5, contd.

(c). *Noakholly. 1876-77.*—Except the zemindars of Bullooah, no other did anything to help their ryots at the crisis succeeding the cyclone, and none undertook any work of public utility. Considering, however, that many of the zemindars of the district are not residents of the place, and that, excepting the owners of the Bullooah estates, few are capable of undertaking works of utility on a scale sufficiently large to attract public notice, I am disposed to think that their shortcomings may have proceeded rather from inability than from unwillingness. The Bullooah zemindars did very kind and praiseworthy service by affording aid to their tenants and others during the critical time which followed the cyclone, by giving them medicine, clothes, and rice gratis. In Chittagong, where the talookdars and zemindars are all residents of the place, a good many tanks, roads, and other petty works were constructed.

(d). *Estates paying revenue—*

	Chittagong.	Noakholly.
Estates paying revenue not exceeding Rs. 10 ...	... 25,989	482
Exceeding Rs. 10, not exceeding Rs. 50 ...	... 2,408	647
" " 50 " " 100 ...	... 768	244
" " 100 ... ...	... 1,062	265
	30,227	1,638
Number of estates in the towjee ...	... 29,002	1,644
	Rs.	Rs.
Total amount of revenue ...	... 7,50,185	6,15,438
" " collected ...	... 5,72,718	4,29,184
	13,22,903	10,44,567

VI.—BHAGULPORE DIVISION—

(a). *General. 1872-73.*—(1). A conspicuous fact connected with the land system of the division is stated to be the absence of intermediate permanent rights between those of the zemindars and the cultivating ryot, and the general practice of farming estates on short leases. This is a thoroughly bad system, like that of the old Irish middlemen. "There are very few, if any, zemindars," says the Commissioner, "who can be brought to the notice of Government for anything done by them during the year to improve the condition of their villages. As a rule, big estates are let out in farms, and the condition of the ryots is not cared for. The zemindars do not understand or care for improvement; in many cases they are spendthrifts, and their estates are heavily encumbered." The Government is making every effort to rid every estate over which it has influence from this farming system, and executive influence has been brought to bear, with the most beneficial effect, in the case of the estates of Rajah Leelanund Singh, the greatest zemindar of the division.

APP. XIII.

BHAGULPORE
DIVISION.

Para. 5, contd.

(2). The indebtedness and embarrassment of Leelanund Singh's estate is a lesson that ought not to be lost upon other zemindars who will resort to litigation. No man has been so systematic a litigant, and so successful, as Rajah Leelanund; he has got many great decrees against Government as well as against others, and yet the net result of it all is, that he is greatly involved in debt, and, until Government afforded its assistance, his people were mismanaged and discontented.

(3). The Lieutenant-Governor believes that nowhere have the rents of a peaceable, industrious, and submissive population been more screwed than in Bhagulpore. It was the same action of the zemindars that was leading to rebellion in the Sonthal Pergunnahs. As regards particular zemindari estates, however, where the tenantry belong chiefly to low castes, it is stated that they will leave an estate on the smallest provocation; and it is a comfort that the industrious poor are thus able to go off to another estate when exaction is carried to excess.

(4). 1875-76.—The condition of landholders generally in the division is described as most unsettled. "Considerable changes," writes Mr. Barlow, "may be expected. The old houses are heavily involved; many of them have already been sold up, and others are gradually breaking up, owing to mortgages being foreclosed or sales being concluded; and new blood, chiefly of the mahajun class, is being infused into the zemindars. I have no doubt that, as time goes on, we shall see, except perhaps in the largest estates, a new set of zemindars comparatively free from indebtedness, and bestowing more personal attention upon the management of their estates than the old ones could do." * * The Commissioner reports that in some cases the landlords are reducing themselves to the position of annuitants on their estates, by giving leases to middlemen, who are not accustomed to show as much consideration towards their tenantry as would be shown by a resident proprietor.

(5). 1876-77.—In his report for 1875-76, the Commissioner drew attention to the gradual break-up of many of the old zemindari families, owing to accumulated debts and mismanagement, and also to the mischievous effects of the farming system as worked in many parts of this division. In the present report a lamentable account is given by the sub-divisional officer of the state of things in the Barrh sub-division, two-thirds of which are leased out in farm to non-resident speculators, while in the remaining one-third at least half of the landlords are also non-resident. The farms run usually for seven years, and are only renewed on the payment of a heavy and increasing premium, which falls entirely on the ryots. The tenants are said to have no rights, to be subject to the exaction of forced labour, to illegal distraint, and to numerous illegal cesses, while the collections are made by an unscrupulous host of up-country *piadaks*. Rajah Leelanund's zemindari is said to be one of the worst. * * The Commissioner speaks well of many of the zemindars and native gentlemen of his division, but specially singles out Rajah Ramnarayan, of Monghyr, as a model landlord.

(6). *Muldah*. 1876-77.—The large zemindars here are non-residents. These seem mostly to let their estates to farmers and then to stop. Interest or care for their ryots they have not. This is not of so much

consideration here, as rents are low, and so much can be made by silk, APP. XIII. &c., that the ryots are generally well off.

PATNA DIVISION.

Para. 5, contd.

VII.—PATNA DIVISION—

(a). *General. 1872-73.*—(1). The conduct of the zemindars in the division, especially the smaller landholders, is unfavourably reported on. They are described as oppressive on their tenants, and indifferent and apathetic on subjects of public interest. All over the world, petty landlords are apt to exact more than very large and rich ones. That is the nature of things; and it probably would be the case in Behar, that great landholders might be made amenable to advice if they really managed their estates direct. The Lieutenant Governor, however, fears that the fact is much as described by the Deputy Collector of Nowada and the Collector of Sarun in the following passages:—

“The very system adopted in this division for land management renders a faithful discharge of the duties imposed under the regulations impracticable. The landed property is let out in farm, generally on *zuripeshgi ticca*, for a term of years, to speculators in land, who, during their short incumbency, do their best to squeeze as much out of the tenants as possible.

“The zemindars, whenever they have a substantial share in a village, are, as a rule, oppressive, and on the estates of many of the larger zemindars, perhaps, the least consideration for the tenantry is shown. The system of farming widely prevails, and were it not that the full rent-roll is not levied in villages leased out to indigo-planters, the stimulus to enhanced rent-rolls, afforded by indigo cultivation, would have occasioned even a greater rise in rents.”

(2). Where the pettiest proprietors are also cultivators, they are thriving and prosperous, and there is no better condition; but His Honour is no admirer of very small proprietors, who have abandoned all cultivation, and live on the rents only. Sir George Campbell is, however, inclined to think that there are in Behar a good many who come within the class of peasant proprietors, as there are also in the North-Western Provinces, though no doubt they are not general, as they are in the Punjáb and elsewhere. The Lieutenant-Governor notices that in this district the average rent rate per acre is stated to be Rs. 5-3-3.

(3). *1876-77.*—* * The majority of the zemindars in Tirhoot are unfavourably mentioned, being described as grasping and oppressive to their tenantry. * * The relations between landlords and tenants in North Behar are described as being by no means cordial. The zemindars complain that the ryots do not pay their rents, and that they are unable to enforce decrees; while the ryots complain of illegal-distraints, oppression, enhancements, and summary ejections. There can be no doubt whatever that the combined influence of zemindars and *ticcadars* has ground the ryots of Behar down to a state of extreme depression and misery. The majority of them probably do, as a matter of fact, possess rights of occupancy, but, owing to change of plots, and the subjection of the putwarees to the zemindars, are unable to produce legal proof of this.

1877-78.—The low condition of the agricultural and labouring classes in Behar has formed the subject of much consideration of late years.

APP. XIII. It is needless to repeat what has been often said before as to the ignorance, indebtedness, and general helplessness of the Behar ryot. No fresh touches are added in this year's report to the melancholy picture, but it may be fairly assumed that, as it was a year of short crops and high prices, there must have been even more than the usual pressure upon the masses. The division was unable to retain and pay for its own produce, and exportation carried away a large proportion of the crops and stocks. It is only apparently in the north-east of Shahabad and along the Soane that the ryots have anywhere got a position of comfort.

PATNA DIVISION.

Para. 5, contd.

(4). 1872-73 (*Commissioner*).—I have already dealt elsewhere with the conduct of zemindars in regard to the general condition of the ryots. I have nothing special to remark on their conduct as zemindars during the year. There have been no very serious affrays; the help given to the police is mostly half-hearted, and only given where the Magistrate insists on it; while in very many instances the petty maliks are the great supporters and protectors of bad characters. The traditional oppression ever used towards the ryots is really of the most grinding nature in many parts, though from the fact of its being customary, its real nature is perhaps unrecognised by either party; and I cannot say that the relations between zemindars and their ryots are other than amicable as amicableness is understood.

* * * * *

There have been some conspicuous instances of liberality on the part of individuals in subscribing to schools, in starting dispensaries, and in building bridges; but these are quite exceptional, and, as a rule, the zemindars of the division are indifferent and apathetic on all such subjects, and can, with great difficulty, be made to contribute anything for their support, though they themselves and those around them are to be benefited. I must say that, as a rule, I believe the ryots to be more oppressed under the rule of petty maliks, kyeests, and babbhuns, than under the large zemindars, or even the Mussulmans of old family.

(b). *Sarun*.—Considering how lightly the land revenue falls on the land at the present day, and the large profits which in consequence accrue to landed proprietors, it might be expected that at least the zemindars of the district would, as a body, be extremely well off, and so they undoubtedly would be, were it not for the influence of the Hindu law of division of property. As it is, owing to the constant sub-division of property into numerous and, for the most part, infinitesimal fractional shares, the profits of the land are divided among so large a number, that many of the so-called zemindars find it impossible to subsist on their proprietary income alone, and eke out an existence by means of cultivation or service, while still eager to retain the shadow of their zemindari status long after its substance has departed. There are still, however, a few considerable zemindars in the district, and these of course, where not involved in debt, are in prosperous and often wealthy circumstances.

VIII.—ORISSA DIVISION—

(a). (1). 1872-73.—Considering how the zemindars of Orissa have been created by us, as is clearly shown in Mr. Toynbee's recent publication, and

how, notwithstanding their great increase in wealth, and the enlarged cultivation, the former thirty years' settlement has been extended for another thirty years, the Lieutenant Governor thinks their grumbling and complaints of a breach of faith (paragraph 68), because they do not also get constant remission of revenue besides, is most unreasonable and preposterous. It shows that there are some people who are only spoilt by indulgence. The conduct, too, of a large proportion of these men towards their tenantry makes it clear that, far from doing as they have been done by, they have sought to exact from those beneath them the uttermost farthing of that which had been forgiven them by their lord. This, and a great deal more besides, they have exacted. His Honour, however, is rejoiced to see that even already, independently of the measures which may eventually be adopted, much good has been effected by the exertions of Messrs. Beames, Fiddian, and of the Commissioner himself; and the way in which these officers have brought abuses to light, entitles them to the highest credit.

(2). 1872-73.—A few of the wealthier zemindars are fairly educated; but the great majority can only read and write tolerably, with a fair knowledge of arithmetic and accounts. Almost every appointment above the lowest in public or in private service is held by members of this class. The changes consequent upon succession by inheritance, and upon the abandonment of occupancy or other secondary rights during the famine, without any efficient record of rights, have led to endless litigation, from which but few of the zemindar class can escape. The richer zemindars also engage largely in money-lending, and the result of litigation and usury is demoralising. These men are brought face to face with Government by the settlement, and it is natural that they should have complaints, and that when these are rejected, they should think that Government has broken faith with them. The question of remissions is an endless source of complaints and dispute. There can be no doubt that the interpretation put upon the settlement engagements by Sir H. Ricketts and his contemporaries was more favourable to the zemindars than that of the officials who succeeded him, and the zemindars are apt to think that they have been, at times, treated illiberally, if not unfairly; hence there is no great confidence as to the future action of Government in any matter.

IX.—CHOTA NAGPORE DIVISION—

(a). *General, 1872-73.*—(1). The progress of Christianity among the people tends to make them independent. It may be hoped that the officers of Government will be able to render their position tolerable, notwithstanding the wide rights improvidently given to chiefs in the early days, when the only object was to protect the plains against the hill people, and the revenue was alienated to those who were bound to guard the passes, but have now become almost a sinecure.

(2). 1872-73.—His Honour notices what is said of the landlords in Maunbhoom, that they have served on their tenants notices of enhancement of rents at treble, quadruple, quintuple, and even higher rates. The explanation of the talookdars—than which, as Colonel Dalton says, a more unjust reason for enhancement could not have been given—is,

APP. XIII.

CHOTA NAGPORE
DIVISION.

Para. 6, contd.

APP. XIII. that having accepted their talooks with a spurious rent-roll, according to which the head proprietor himself never dreamt of realising, they were compelled to increase heavily to make some profit out of the transaction. Be that as it may, His Honour is certain that if justice is fairly done, such attempts cannot succeed.

CHOTA NAGPORE
DIVISION.

Para. 5, contd.

(3). 1872-73.—The condition of the people throughout the division is favourably reported on. The great landed proprietors were a few years ago much in debt; but some of the largest estates have come under the Court of Wards, and, with one exception, all these are now in a very solvent position. There are others, the owners of which are hardly able to hold their heads above water; but this does not affect the people. The ryots, for the most part occupaney men, are not at all dependent on the wealth of their landlords, who, whether wealthy or indigent, do little or nothing to improve their estates, and the ryots have to improve their own holdings as best they can. This is one reason why they object so strongly to the enhancement of rents. Their own condition has no doubt been improved; they have more movable property and more comforts than they had before; but they declare, with truth, that if this be not entirely owing to their own exertions, it certainly does not arise from anything their landlords have done for them.

6. The condition of the ryots and of the people is noticed as follows in the Administration Reports:—

Part I, page 33.

I. 1871-72.—(a). Large as the population is, and probably increasing, it has been common among Europeans and others to speak of the great increase of wages, and sometimes to assume that the labouring classes are better off than heretofore. Some increase of wages there has no doubt been everywhere, or almost everywhere, and in some places that rise has been large. In the districts of cheap labour which throw off a surplus population, as in Chota Nagpore and Behar, the wages of coolies employed by Europeans may have risen from three half-pence to two pence per day in the first-named province, and from two pence to two pence half-penny, or even three pence, in that last mentioned. In some districts day-labourers may even earn as much as six pence per day at busy seasons. Domestic servants, who formerly received five and six rupees per month, may have risen to six and seven or eight rupees.

(b). Still it may be doubted whether in the country generally wages have risen more than prices and the expenses of living, and whether those who work for hire are materially better off than they used to be. At the same time, there is perhaps more of regular work for regular wages, and there is probably less abject poverty than there once was. In fact, in times of fair crops and ordinary prosperity, there is not much appearance of want, and the people, even in hard times not amounting to downright famine, still maintain themselves, as they always have in a wonderful way, without dependence on charity or public relief of any kind.

(c). The agricultural ryots or small farmers are a more numerous class in most districts than the labourers for hire; and as they benefit by a

rise in prices, it may be hoped that their condition is improving in districts in which enhancement of rent does not follow too rapidly and too severely. It has been said that in Bengal direct enhancement has not been generally pushed to an extreme; and it is the Lieutenant-Governor's hope that, more or less, the most important class in the agricultural system—the ryots—are beginning to share to some extent in the general prosperity of the country.

APP. XIII.

CONDITION OF
THE RYOTS.

Para. 6, contd.

(d). (1). The ryots may be divided into three classes: those who, under the provisions of the permanent settlement in favour of ryots generally, or in virtue of subsequent contracts, are entitled to hold at fixed rents; those who have a right of occupancy, subject to a regulated variation of rents; and tenants from year to year, commonly called tenants-at-will. Owing to the difficulty of proving an actual or constructive possession from the time of the permanent settlement, and to a rule which makes every man who or whose ancestors have in fact at any time submitted to any increase of rent, just or unjust, liable to enhancement for ever, it is to be feared that the ryots safely established in the first-mentioned class, holding at fixed rents, are comparatively few in number.

(2). The line between tenants-at-will and occupancy ryots is not, in practice, very well defined; one class runs very much into the other, and in many parts of the country customary rents are regulated by the same customary rules in both cases. * * It may be said, however, that the mass of ryots are either occupancy ryots or ryots whose rent is similarly regulated by customary adjustments rather than by the strict law of supply and demand and the rent definitions of the economists. In considering this matter, then (the road cess), the occupancy ryot may be taken as the normal type of the ryot to be dealt with.

(3). Now, taking this normal ryot, it must be first said that there is reason to hope, as the Lieutenant-Governor believes, that his status has considerably improved of recent years. There has been a material improvement in the position and means of the Bengal agricultural community, owing to the increasing demand for the great staples of commerce. It is hoped that the rise in rents has not been so great as to absorb the whole of the ryot's share in the general improvement. It may even not improbably be that if the proprietors, instead of levying irregular cesses, were systematically to pursue in the courts a course of enhancement to the utmost limit that the law allows, they might still establish grounds for further enhancement in many cases, while the expenses of such a mode of proceeding would fall very heavily on the ryots, whatever the event of such suits.

II. 1872-73—(a). (1). As a rule, the people in these provinces are comparatively better off in the east, and worse off in the west. They are better off in the former in two respects, which may be more or less inter-related as cause and consequence: (1), the rate of wages is higher in the east, at the same time that food is for the most part cheaper (Orissa in the west, perhaps, excepted with respect to cheapness of food); and (2), rents in the east are less screwed up to rack-rent pitch, and probably

APP. XIII. are lighter in comparison to the productiveness of the soil and remunerative character of such staples as jute, &c.

CONDITION OF
THE RYOTS.

Para. 6, contd.

(2). It is indeed certain that if the practical working of the permanent settlement had accorded with the theory of the Regulations of 1793, if the ryots had fixity of rent as the zemindars have fixity of revenue, the condition of the people of Bengal would now be the easiest in India ; but it is unfortunately far otherwise ; and the degree to which rents have been racked in different districts is in a considerable degree the measure of the comfort or discomfort of the people.

EASTERN BEN-
GAL.

Dacca Division.

(b).—EASTERN BENGAL—

(1). In the Dacca division the material condition of the people has certainly improved, as compared with what it was only a few years back. Immense sums of money now come into the country for payment or purchases of country produce ; and though a share clings to the fingers of those through whom it passes on its way from the exporting merchant to the cultivators, still there is no doubt that a good proportion of it does reach the ryot. * * On the whole, it may fairly be said that the agricultural class of the inhabitants of Eastern Bengal are in a condition of increasing comfort and independence.

Chittagong
division.

(2). Under the term Eastern Bengal may also be included the Chittagong division. The material condition of the people of Chittagong is said to be very prosperous. The residents are mostly agriculturists ; and even day-labourers, domestic servants, &c., have their patch of land which is cultivated by themselves or their families. That they are well off is manifested by their independence, and the fact that it is sometimes difficult to get labourers, even at a fair rate of wages. * * The cost of living has increased, but the people are better off. Nearly every one has an acre or so of land in cultivation.

(c).—WESTERN DISTRICTS—

n. (1). In Orissa there is reason to believe that a change for the better is taking place. Vast sums of money have been spent in the country on irrigation works, and but a small proportion of this is carried away ; much of it does, and must, sink in the country. Labour is abundant, and is paid for at remunerative rates. Trade has improved ; exports and imports increased. A large number of people are better housed, clothed, and fed, and have more home comforts than formerly. The improvement has probably affected the mercantile classes more than the actual cultivators. Even, however, in remote villages a greater air of comfort may be observed—a better thatch to the houses ; and this in Orissa is one of the best signs of improvement, as it is about the first thing an Ooriah ryot does when he gets a little above water. * * At the same time, the comparative well-doing of the people is somewhat alloyed by the extreme poverty of a large landless labouring class. The Collector of Balasore writes that he has known many cases where a family only ate food once in two days, and no member of the family has more than one garment. It is fortunate that there are now ample facilities of emigration.

The extraordinary increase of passenger traffic between Calcutta and Orissa, and by sea, is a most gratifying sign that the population are more and more learning to help themselves.

(2). Of the Burdwan division it may be said that the people are, upon the whole, poorer than the average of the inhabitants in Bengal, and that wages are low, except in the vicinity of Calcutta and along the Hooghly river. Throughout the division the lower classes are a poor and improvident people; and although their actual bodily wants are small and easily satisfied, there is but small approach to anything like an accumulation of capital among them at present. There is a good deal of emigration from the western borders of the division, but not apparently from the alluvial tracts, or from Beerbhoom.

(3). The census returns show the district of Hooghly and a few thannas of Midnapore (now invaded by the fever), with two or three thannas of Burdwan, to be the most populous tracts in these provinces—probably in India. The question arises whether any considerable proportion of the whole population are townspeople and non-agriculturists. In some parts of Hooghly this is, no doubt, the case. Allowance must be made for the towns and great villages, containing a large town, mercantile and fishing population, which fringe the river Hooghly in the Hooghly district, including Howrah in that term. But, apart from this, we find in the back-lying thannas of the low and marshy country in a purely rural tract an immense population. Similarly, in Midnapore, the most crowded thannas are those in the pit of the low land between the great rivers. These, with a population ranging from 939 to 1,093 per square mile, seem to form a low-lying water and watery tract, stretching from behind Howrah to near Midnapore, absolutely agricultural, without a single town, and still with an average population fully equal to, or exceeding, 1,000 per square mile of gross area. This population is enormous. On the other hand, living as rural Bengalees do in scattered villages, it is not certain that the country population is necessarily so thick as to affect health.

APP. XIII.

CONDITION OF
THE RYOTS.

Para. 6, contd.

Burdwan divi-
sion.

(d).—CENTRAL DISTRICTS—

CENTRAL DIS-
TRICTS.Presidency divi-
sion.

(1). The condition of the people in the Presidency division is believed to be improving. All ryots have, now-a-days, become better off, owing to the increased price of agricultural produce. It is stated that some years ago it was not unusual to find even tolerably substantial ryots living on one meal a day; now they have two, and sometimes more, many of them taking a small meal of cold rice, salt, and onions early in the morning. It is, however, not only in the way of a more plentiful supply of food that their condition has been improved—a change for the better is observable in their houses, which are better raised and better constructed. They have a larger supply of clothing, while a *tuktaposh* (bedstead) and a quilt stuffed with cotton have taken the place of the mats on which they lay, and of the rags with which they covered themselves. True, the ryots work hard all day to provide for themselves and their families, but the better class of them, as a rule, now enjoy something more than necessities. “Well-to-do,” in the sense of owning substantial property, the great mass of ryots certainly are not; for they are a

APP. XIII. rule, indebted to the *mahajuns* from year to year. But, so far as provision for necessities is concerned, the average ryots cannot be said to be badly off in a prosperous year. The mildness of the climate obviates the necessity for expensive houses and clothing. Their luxuries are few and simple, and their food inexpensive in comparison with the value of their labour.

CONDITION OF
THE RYOTS.

Para. 6, contd.

24-Pergunnahs.

(2). It is certain at least that the people are fairly prosperous, by an Indian standard, in the 24-Pergunnahs district. The proximity of Calcutta affords a ready sale and a comparatively high rate of wages; while from the north, south, and west of the district rice is largely raised and exported, and quantities of timber and firewood and thatching leaves can be obtained from the Soonderbuns for the mere trouble of cutting. Immigration into this district is still steady, and there are no complaints of non-population.

Jessore and
Nuddea.

(3). It is to be regretted that the peasantry of Jessore and Nuddea are not so well off; but in Jessore, though the ryots may be poor, there are many *jotidars*, *gautidars*, and others, who, with their rice fields and date gardens, occupy something of the position of peasant proprietors. In Nuddea the people came wonderfully through the floods, and then and since have shown much self-reliance.

Rajshahye divi-
sion.

(4). In the large division of Rajshahye there is probably more wide variety. Moorshedabad partakes more of the character of the western districts, and its account is not very favourable. Labour seems to be cheaper and food dearer than elsewhere. On the other hand, as regards the north-eastern districts, there is no doubt that a more favourable account is correct. The marked improvement among all classes is denoted by the better clothing which is used, by the substitution of metal vessels for earthenware, by the increase in the rate paid for labour, the independence of servants, and by the freedom from debt of the majority of the cultivators. In Rungpore there can be no doubt that, with fine produce and favourable tenures, and a great demand for labour, the people are very well off; though they are suffering from a temporary discouragement, owing to the fall in the price of jute. Again, in Dinagepore, with a comparatively sparse population and very productive soil, the people are well off, and will no doubt become much more so when the railway is completed.

Cooch Behar.

(5). The condition of the people of Cooch Behar is good. There is no overplus of population. The soil is everywhere fertile, and want is rare. The cultivator can count on three crops—jute, tobacco, and *dhan*, and often mustard; and the season which may be fatal to one is beneficial to the others.

(e).—CHOTA NAGPORE DIVISION—

The condition of the Hindu population of the Chota Nagpore division is said to be tolerable. * * The Koles of Singbhoom, who but a few years back were a savage and barbarous population, are now a prosperous people, and their villages are described as often perfect pictures of comfort and prettiness. The ryots, for the most part occupancy men, are not at all dependent on the wealth of their landlords, who do nothing to improve their estates, and leave the ryots to improve their

own holdings as best they can. The ryots' condition has no doubt been improved; they have more movable property and more comforts than they had before; but they declare, with truth, that if there be improvement, it is entirely owing to their own exertions, and it certainly does not arise from anything their landlords have done for them. On the other hand, it must be admitted that, although labour is abundant, wages are perhaps lower in Chota Nagpore than almost in any other part of India, and have not risen in proportion to the increase in the price of the ordinary food staples. That the people are, on the whole, well off, is owing to their freedom from prejudice and local ties and their industrious disposition, which enables them to go forth from their own country to earn money by labour. The labourers of this division largely emigrate for employment. They pour into all parts of Bengal after their own harvest in December, and return with their modest earnings in May. The tea districts are also mainly recruited with coolies from Chota Nagpore.

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CONDITION OF
THE RYOTS.

Para. 6, contd.

1877-78.—Most of the zemindars in Chota Nagpore are so deeply involved in debt that they are unable to incur any expense for the benefit of their districts, or even to assist their own ryots when in distress. There are, however, some few exceptions to this.

(f).—BEHAR (1872-73)—

BEHAR.

(1). The local officers all report strongly of the poverty of the ryots in the Patna division, and it is beyond doubt that the people are badly off. Late years have not been bad, and food has been comparatively cheap. But it is a good deal dearer than it formerly was, and the wages of labour are still very low. Except during the harvest and planting seasons, the rate of unskilled labour is only one and a half annas per diem. Although Gya and Shahabad have an apparently smaller population rate than elsewhere, they have so much of barren hill tracts, that in the well populated area they are practically no doubt just as overcrowded as those districts which show a larger rate. In Gya it is said that the agricultural labourer is worse off than anywhere else in the division. He is generally paid in grain, and lives really from hand to mouth. Two or three seers of some coarse grain, representing a money value perhaps of $1\frac{1}{2}$ annas, suffice him to support life, and enable him to work. With the Soane works, however, close at hand, and two annas a day to be earned there, there is a brighter side to the question. The zemindars of this division, especially the smaller landholders, are stated to be oppressive on their tenants. On the larger estates, the system of farming out villages widely prevails—a system of profit upon profits, under which the cultivators sadly suffer. Happily, emigration is a resource well known, and in some degree practised by the people. * * There is a periodic emigration of labourers from the Sarun district, who go to Purneah, Julpigorie, Rungpore, and Cooch Behar.

Patna division.

(2). There seems to be a good deal of difference of opinion regarding the general condition of the people of the Bhagulpore division. In the Bhagulpore and Monghyr districts, the population is large and rents are high. Wages, on the other hand, are low—certainly lower than in most districts in Bengal proper, and very much lower than in the eastern districts. Food also is dearer than in these latter. Wages have risen,

Bhagulpore
division.

APP. XIII. compared to former times ; but so, it is stated, has the price of food. Still the people are, for the most part, a decidedly industrious people—quiet, simple, and careful. They seem to be content in their small humble way. There is little or no emigration, the small number of emigrants reported being in great part inhabitants of other districts. What emigration does take place is confined to the north-west corner of the division, adjoining Tirhoot. In the reports of the eastern districts, it is not often said that labourers from Bhagulpore come to seek for employment. The Magistrate of one district made inquiries during the past cold weather into the condition of the ryots on the frontier territory, and the result is discouraging, in that, after very fairly weighing the respective advantages and disadvantages of both, he comes to the conclusion that the condition of the Nepal ryot is, on the whole, better than that of the British ryot. Although the smaller rent taken from the former by the Nepalese Government is supplemented by forced labour and the purveyance system, on the other hand, the illegal cesses and exactions of zemindars, middlemen, &c., and other vexations, turn the scale against the British cultivator. In Purneah, however, where the population is much more sparse, it is probably a correct statement that the people are better off than elsewhere in the division. They suffer a good deal from fever and from the ravages of the river Koosee ; but those who escape these evils are perhaps in their means above the average of the ryots of these provinces.

Sonthal Pergunnahs.

(3). The people of the Sonthal Pergunnahs are a simple and improvident race. They had in the past earned easily a poor living, and spent their little easily, so long as they had plenty of land, light rents, and little interference in their own jungly country. But since they have been invaded by grasping speculators and adventurers, and the zemindars by these instruments have begun to levy heavy rents and exactions, the Sonthals have felt distress.

, page 16.

III. 1874-75.—Special inquiries have been made regarding the indebtedness of the cultivators as a class. It is not so serious as it once was, but it still exists very largely. It is worst in Behar, somewhat considerable in Central and Western Bengal and in Orissa, less decidedly in Eastern and Northern Bengal, and altogether disappearing in parts of Eastern and Northern Bengal. In those districts where it exists, there is no class of cultivators—not even those with occupancy rights or sub-proprietary tenures—who are free from it. Indeed, the stronger a man's tenure, the better is his credit. The amount of debt is, for the most part, not excessively burdensome ; and, upon a general average, the amount of debt may be estimated as being equal to about the cultivator's income for two years. The ordinary rates of interest are believed to be as high as two pice in the rupee per month for money lent, equal to $37\frac{1}{2}$ per cent. per annum ; and 50 per cent. is usually paid as interest on rice advances. The security, according to which the lender exactly measures the loans, is the standing crop. The creditors are generally the village bankers, but often they are the zemindars. The loans are contracted partly for purchase of cattle and implements of husbandry, to some extent for law expenses, and largely for marriages. It is remarkable that relatively extravagant ideas regarding marriage expenses should spread even to these humble classes.

IV. 1874-75.—(1). It is difficult to generalise upon the prices of common food, because they differ so much at the central marts, and in the isolated tracts of the interior respectively, being tolerably uniform in the former, but being sometimes extraordinarily cheap in the latter. As might be expected, the increasing facilities of transport keep the prices within a moderate range of valuation at all the principal centres; a superabundant yield in one place, the Gangetic delta for instance, will not cause food-grains to be merely a drug in the market there, but will cheapen the prices throughout Bengal. Food-grains, which are quoted at high prices in central places, are obtainable most easily and cheaply, immediately after harvest time, by those who dwell at the places of production. But, according to the quotations at the central places, the prices are much higher than they used to be in former times. Now-a-days in Bengal and Behar a rupee will ordinarily purchase from 20 seers to 25 seers of common rice, and in Orissa 25 seers to 30 seers. During the last preceding generation, it would have purchased 40 seers, and in the generation before that, 60 seers and upwards. In Calcutta itself, the present prices are dearer; there a rupee will seldom purchase more than 16 seers of common rice. In Behar, however, maize and other cereals, besides rice, are consumed, and of these a rupee will purchase as much as 35 seers. The bearing of these large facts on the condition of the labouring classes cannot, however, be fully seen without advertence to the rates of wages and the modes of remunerating labour.

(2). The wages of labour may be generally stated at one to two annas a day in Behar; two annas in Orissa; three annas in Northern Bengal; four annas in Central Bengal; four annas in Eastern Bengal; and six annas in Calcutta. During the last generation, the rates ranged from one anna at the lowest to three annas at the highest, the lowest being the generally prevalent rate. On the whole, the wages of labour have risen almost coincidentally with the prices of common food. So far, then, we may hope that the lot of the labourer, which was always very hard, has not become harder of late. But we must sorrowfully admit that it is almost as hard as can be borne. A plain calculation will show that the wages will suffice for little more than the purchase of food, and leave but a slender margin for his simplest wants. In Behar, indeed, a comparison of prices with wages might indicate that his lot must be hard beyond endurance. It must be remembered, however, that wages are often paid in kind, especially for labour in the fields. The labourer and his family all work; the man, the woman, and the child receive each a dole of grain, enough to sustain life; they could hardly get less now, and probably they never got more; still, low as the condition of the labourer everywhere is, it is lowest in Behar. The industry and endurance, not only of the men, but of the women and children, in these classes are remarkable. One cause of the lowness of the wages is the comparative inefficiency of the labour; which, again, is caused by the low and weak physique of these poor people, by reason of the poverty of their nurture, one cause acting and re-acting upon another; while at the same time, despite the high rate of mortality, the high rate of births more than maintains the total number, which is probably increasing rather than decreasing.

V. 1875-76—(a). The comparative low condition of the ryots and peasantry in those parts of the province of Behar which lie north of the

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Part I,
pages 41-2.Part I,
pages 13-14.

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Para. 6, contd.

Ganges, and especially in the upper half of the old district of Tirhoot, continues to cause regret and apprehension. * * The revised census and other enquiries instituted in consequence of the scarcity of 1876 showed that the power of distraint which the law gives to the landlord with certain well-defined limitations had in North Behar generally, from time immemorial, been exercised by the landlord to an unlimited extent, placing the crop of the tenant, from sowing time to harvest, virtually at the disposal and under the watchful control of the landowner. The practice, when carried thus far, is subversive of the status which the ryots ought to possess, and which the law meant them to have. * * *

(b). The material advancement of the sub-proprietors, the ryots, and the peasantry in Eastern Bengal, has been mentioned with satisfaction on former occasions. A remarkable illustration has been afforded by the detailed enquiries which are being made for the valuation of the land in the deltaic district of Backergunge. It appears from the road cess returns that the rent-roll payable to the intermediate tenure-holders is often ten, twenty, or fifty times the rent paid to the superior landlord. It seems probable that not less than a crore of rupees (assumed as equal to one million sterling) are annually paid in rent in this district, and that the value of the agricultural produce of the district can hardly be less than five millions sterling annually, and may be much more. The returns, moreover, while they show the prosperous condition of the tenure-holders and other middlemen, show also how the profits of the land are slipping out of the hands of the zemindars, who have permanently alienated their interests in the soil, and in many cases have fallen into the position of needy annuitants.

Part II, page 13.

(c). It is unfortunately true that although the Durbungah estate may be better managed than any other in Tirhoot, this estate does not essentially differ from the rest of the province in respect of the inferior condition of the peasantry as compared with the surrounding provinces. Undoubtedly the condition of the peasantry is low in Behar, lower than that of any other peasantry with equal natural advantages, in any province which Sir Richard Temple has seen in India. In 1868 the inferior status of the peasantry and tenantry was the subject of much official correspondence. In 1872 and 1873 this matter caused some anxiety to Government. In 1874 the famine supervened; the immediate solicitude of Government was rather to save the lives of the people than to protect their legal rights. In 1875, after the famine storm and crisis, it was thought advisable to let the land have rest from all sorts of agitation. But during the past year a part of the very tracts which previously suffered was again threatened with scarcity, and the question of tenant-right once more forced itself upon the attention of Government.

7. This account of the condition of the ryots may be continued in detail of divisions from the Administration Reports of Commissioners of divisions, and (where so indicated) from the Administration Reports of the Bengal Government.

I.—EASTERN DISTRICT—

APP. XIII.

(a).—DACCA DIVISION—

CONDITION OF
THE RYOTS.

Para. 7, contd.

Page 22.

(1). 1872-73.—The Lieutenant-Governor observes that the general result of the information collected regarding the crops is to show exceeding readiness rather than backwardness on the part of cultivators to meet the demands of the market.

(2). *Dacca District*.—The condition of the ryots is¹ excellent. The poorest class of persons now are petty landowners, whose ancestors have given out all, or nearly all, their lands as permanent under-tenures, and who have thus received no increase of income in proportion to the rise in price of all the necessaries of life. There are many of these people who despise any trade, and they must feel the rise in prices severely.

Page 266 of
1872-73.

(3). Sub-infeudation is small in Dacca, excessive in *Furreedpore*, where the people are not quite so well off as in Dacca.

1872-73, pages 24
and 234-39,
1875-76.

(4). *Backergunge* is much broken up into petty holdings (1872-73, page 24). "It has long been, I believe, a recognised fact that the most prosperous ryots in all Bengal were those of Backergunge, and that, amongst them, the ryots of Dukhinshahbazpore were better off than the rest."

(5). *Sylhet*, a district of peasant proprietors. "The material condition of the people is prosperous to a degree unknown in a good many of the most prosperous districts in Bengal. Everywhere in this district, except the west of it, the ryots' houses present a well-to-do appearance. Nowhere else do the commonest ryots enjoy such luxuries as fish and fruits to the same extent as in Sylhet. * * The great object in life with the poorest Sylheti is to have a patch of land that he can call his own. When he goes out for work, he does so more to assist his brothers, from whom he hopes to get the same return, or from the hope of some unusually good wages.

1872-73, page 272.

(6). *Mymensingh*.—Many small estates in the district. Only one-third of the district is under cultivation, and land can be secured over the district on very easy terms. The Lieutenant-Governor cannot pretend to state, even approximately, the annual money-value of the commercial transactions of the district; but there cannot be the least doubt that the value of the exports greatly exceeds that of the imports, and that a large balance is regularly paid in silver. It is pretty certain that, during the last three years, above a crore of rupees has been paid to Mymensingh growers and dealers for the single article of *jute*. The mass of the people are agriculturists of simple habits and temperate tastes, and their demand for imported goods is comparatively small. The consequence is, that a stream of silver is steadily flowing into the district, and it would at first sight appear remarkable that the rise in prices has not been greater than it has; but the solution of the problem lies in the fact that the silver is partly melted down into ornaments and partly hoarded so that there is little, if any, increase in the circulating medium. It would not be safe even to hazard a conjecture as to the amount of silver hoarded in the district; but it may be safely asserted that almost every well-to-do ryot (and there are many thousands of such in the

APP. XIII. has a pot of money buried beneath the floor of his house, or a b
rupees hidden away in a corner of the family chest.

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THE RYOTS.

(7). *Tipperah*.—Very well off (Government Resolution, 1875-76)

Para. 7, contd.

II.—CENTRAL DISTRICTS—

(a).—PRESIDENCY DIVISION—

(1). *24-Pergunnahs District*.—People tolerably well off (1872-73)

(2). *Jessore and Nuddea*.—People not so well off as in 24-Pergunnahs but in 1875-76 there was a marked improvement in the material and social position of the cultivating class in *Jessore*, who had been benefited by a rise in the price of rice, their rents not having risen in proportion. The zemindars in *Jessore*, as a body, are, however, not prosperous, many of the distinguished houses having been ruined, while others are in a state of rapid decay from the minute sub-division of zemindaries by the law of inheritance (1875-76). In *Nuddea* a wide-spread indebtedness prevails among the tenantry.

(3). *Moorshedabad*.—The prosperity of the people is far less marked than it is in the eastern and deltaic districts of Bengal. In Eastern Bengal the ryots are for the most part frugal and independent; but in *Moorshedabad* they appear to be improvident and poor and heavily indebted to *mahajuns*, like those in many of the Behar districts (1872-73 and 1876-77).

(b).—RAJSHAHYE DIVISION—

Throughout this division the demand is for labour and not for capital. The cultivating classes are substantial and well-to-do, and great numbers of hired labourers annually come in from Behar and Nepal, seeking work, which they readily obtain. Neither local labourers nor skilled artisans are to be found, save at very high rates (1876-77).

(1). *Bogra* is under-populated (1876-77): a marked improvement among all classes is denoted by the better clothing which is used, by the substitution of metal vessels for earthenware, by the increase in the wages paid for labour, the independence of servants, and by the freedom from debt of the majority of the cultivators (1872-73). "I (Collector) think that some years ago the majority of cultivators were in debt, but now most of them are free. I learn, however, that in the northern part of this district a small section of the population are the victims of a merciless system of usury known as *adhiari*, which, literally translated, means fifty per centing. A ryot borrows a maund of rice, undertakes to repay a maund and a half in the following year; he generally fails, the maund and a half is treated as a debt bearing the same outrageous compound interest. In course of time the ryot assigns the produce of his holding to his creditor, and lives on such loans as it suits the latter to advance him, and thus becomes a mere serf of his creditor (1872-73); the Collector adds, "this district is so favoured, both in its soil and in its seasons, that emigration for agricultural purposes is unknown (1872-73)".

1872-73, page 104

(2). *Dinapore*.—In this district, with a comparatively sparse population and very productive soil, the people are stated to be well off, and

no doubt become much more so when the railway is completed. APP. XIII
 Mr. Robinson, the Magistrate of Dinagepore, expresses the opinion that the people are better off than in other parts of India, and adduces the testimony of a gentleman who had lately been travelling in Oudh, and who says nothing could be plainer than that the Bengal ryot, with a permanent settlement,¹ is much better off than the peasantry of Oudh. This comparison, however, can hardly be said to involve a high standard, as the ryots of Oudh, besides forming a dense population, have had less rights recognised than any peasantry in India. When the Magistrate can compare favourably with Bombay, the Punjab, and Madras, we shall have more to pride ourselves upon (1872-73, page 13).

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 THE RYOTS.
 Para. 7, contd.

The same merciless system of usury, known as *adhiari*, which has been described by the Collector of Bogra (above), is much more prevalent (the Collector is told) in Dinagepore than in Bogra. ^{1872-73, page 191.}

(3). *Rungpore*.—In this district there can be no doubt that, with fine produce and favourable tenures and a great demand for labour, the people are very well off, although they are suffering from a temporary discouragement owing to the fall in the price of jute (1872-73, page 13).

(4). (a). *Maldah*.—The ryots of the southern and central tracts of this district are notably a well-to-do body. Both mulberry-growing and silk-rearing are the occupations of most of them and are extremely lucrative, bringing in a substantial return for their time and labour. To the north and east the ryots are apparently poorer and more primitive, but withal apparently contented, though in most instances they are entirely under the will and control of their landlords on whose treatment the welfare or otherwise of the tenantry chiefly depends.

(b). The greater portion of the cultivating classes in Maldah are said to be hopelessly involved in debt to their *mahajuns*; so much so that the registration proceedings of that district disclose instances of debtors binding themselves to render personal service to their creditors for a term of years, varying from three to ten, until the whole amount of the debt has been worked out. Not only do debtors bind themselves for their own debts, but also for those of their fathers; and during last year a deed was registered whereby three sons bound themselves to serve a *mahajun* for seven years in lieu of money-payment of a debt to the *mahajun* incurred by their father. Such contracts as these, it is to be hoped, are peculiar to this district. ^{1875-76.}

III.—WESTERN DISTRICTS.—

(a).—ORISSA—

There can be no doubt that there has been for some time past an annually expanding trade between Orissa and the outside world which will, the Lieutenant-Governor hopes, be the means of placing the prosperity of the province on an assured basis (1876-77).

¹ A permanent settlement is exactly what the Bengal ryot wants, but cannot get.

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(1). *Balasore*.—It is evident that the public wealth and the expenditure of the people, both upon luxuries and necessities, are increasing (1875-76).

(2). *Cuttack*.—The Collector reports: "Wherever I went in my tour I met with prosperity. The Ooriah peasant does not display his wealth, being penurious by nature; but the villagers' houses were in good repair, and at marriages and festivals brighter clothing and richer ornaments were observed. In my tour in the south I witnessed the novel spectacle, for Orissa, of foreign merchants settling in nearly every village, buying surplus produce from the peasantry, and paying for it in hard cash, as well as making advances for next year. One firm alone has one lakh and a half of advances out in the Juggutsingapore and Urtot thannas.. A good harvest is more profitable to the peasant now than formerly; now he can sell all his surplus produce at a good price, whereas formerly a good harvest sent down the prices, and his produce fetched him in comparatively little. The only persons who suffer are those residents of towns who live on fixed incomes, and shop-keepers who have no land. These were disappointed to find that so excellent a harvest did not result in greater cheapness of rice; and perceiving that the cause lay in the briskness of export, bitterly complained against the merchants. The material condition of the people has strikingly improved, and this re-acts on the shop-keepers; for the peasant can now afford to spend more money in the purchase of imported articles, and trade thereby improves. That this is the case is shown, among other things, by the rapid increase of the city of Cuttaek, where the shop-keepers mostly deal in imported clothes, brassware, and ornaments. New and handsome shops are rising in all directions; mud walls are giving place to masonry, and thatch to *pucha* roofs (1875-56).

(3). *Pooree* district has less trade than either Balasore or Cuttaek, and although the past few years have afforded good crops and the people are for the most part well off, material improvement is less marked in Pooree than in other parts of Orissa (1875-76).

(b.)—BURDWAN DIVISION—

With regard to the material condition of the people, there is no perceptible change during the year. Mr. Harrison, in Midnapore, writes of the people as impoverished and unfitted for, and likely to be impatient of, direct taxation. In Burdwan the people are said to be poor, but resigned to their fate. In Hooghly it is to be feared that in some parts of the country in villages once most flourishing, there is now a grievous exhaustion of the people, especially of the labouring classes; the adult having been consumed by the ravages of the epidemic fever during the last ten years, and the ordinary ratio in the production of children having been sensibly reduced, as is shown in the census returns. "I" (Commissioner) "fear that throughout the division the lower classes are a poor and improvident people, and although their actual bodily wants are small and easily satisfied, there is but a small tendency to anything like an accumulation of capital among them at present" (1872-73, page 74).

(1). *Hooghly*.—The district consists of a few very large estates, formerly portions of the Burdwan Raj, and held by rich, powerful, and, as a

rule, well educated and well disposed zemindars, who, however, have, owing to the land being let in putni to a great extent, but little to do with the actual management; a few more moderately-sized estates generally of a very profitable nature, and some 3,000 estates of the most petty description, consisting of a few beegahs of land, and paying revenue varying from a few annas to a few rupees. These latter are almost all resumed lakhiraj holdings. Besides these there is an immense number of unresumed lakhiraj holdings.

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The above, however, by no means comprise all the area of the Hooghly district. About one-half is occupied by talooks of great size belonging to the estate of the Maharajah of Burdwan, or land belonging to other estates on the Burdwan towjee. So many and so large are the talooks belonging to the estate of the Maharajah of Burdwan, that a special Regulation (VIII of 1819) was passed, under which the rents of these talooks (Rs. 4,61,626 a year) are paid into the Hooghly Collectorate, and from thence transferred to his credit.

The ryots' holdings are generally small, as much as a family can plough without assistance. The fever which has been so fatal for a period of ten years in this district, by diminishing the number of members in a family has tended to break up the holdings, and has forced on the ryots the employment of hired labour. A considerable portion of land is held as *khamar* land by the zemindar, and is cultivated by hired labour, or under a system of *bhagi jote*. It is to be feared that the condition of the cultivators is very unsatisfactory. They have to pay higher rents generally than formerly, and though they have greater facilities for obtaining employment and for sale of their produce, yet their wants have increased. However, many have acquired occupancy and fixed rent rights which they had not before; and possibly improvements in the communications of the district will do much to better their condition, by opening out markets for produce, which at present it is not worth while to grow, except in the immediate neighbourhood of the railway and river. But unquestionably the road cess will be a heavy burden to the poorest classes of ryots.

1875-76.—“I” (Collector, Sir J. Herschell) “see no general marks of material improvement, compared to the condition that people enjoyed twenty years ago; but the number of good houses and of pukka buildings has certainly increased, and more clothes are worn by all classes above the labourer or agriculturist. Well fed cattle are more common, but starved ones more scarce decidedly, than they used to be. Milk is now so valuable that calves have little chance of growing; grazing lands are few, and the cattle trespass law is strong.”

The truth appears to be that Hooghly, more than the 24-Pergunnahs even, or any other district, has become, as it were, the suburban settlement of Calcutta; and that the densely populated villages all along the banks of the river, for more than twenty miles north of Howrah, are peopled with a well-to-do metropolitan population, who are increasing in comfort and prosperity, while farther in the interior the increase in population and in the demand for food has put pressure on the cultivators, who have been gradually compelled to place even the worst soil under the plough and

APP. XIII. are, as was clearly shown in the recent enquiries that were made, far inferior, in material condition and prospect of improvement, to the ryots of the eastern and northern districts of these provinces (Government Resolution, 1875-76).

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Para. 7, contd.

1872-73, pages
107-8.

(2). *Nuddea and Jessore*.—In these districts, though the people are in a far better condition than has been represented more than once of late years, in sensational letters to Government and the Press, the peasantry are not yet independent of mahajuns and zemindars. It is always necessary to have recourse to the mahajuns in the course of the year, and this is expensive, as the next crop is hypothecated on terms that are unfavourable to the ryot. The position of the people in Jessore and Nuddea would, however, have been more favourable but for the recent floods, which entailed great loss on them.

(3). *Midnapore*.—As the district is being opened out by roads and canals, there can be no doubt that the classes that live by agriculture are improving in position. This improvement, however, is but very faintly perceived among the lowest classes, who, as long as they adhere to the existing custom of living for at least three-fourths of the year on the security of their ensuing crop, cannot be much benefited. It can be no exaggeration to say that half the actual cultivators of the soil borrow their sustenance for the latter portion of the year from either the local mahajun or the zemindar. The rate of interest is so high that it is quite impossible for them to clear off their debt, and they do not try to do so. Practically the creditor finds it his interest to support them at the lowest scale of maintenance which they will tolerate without rebellion, and hence he leaves them as much of the one crop, or advances them as much on the other, as he finds necessary: they work, they sow, they reap for his profit, and he takes as much for principal and interest as he thinks he safely can insist upon.

No state of things can be more absolutely destructive of all independence of spirit, as well as more detrimental to all attempts to better their condition. As in such a condition, paradoxical as it may seem, no taxes can touch them, so, on the other hand, no removal of taxation can benefit them. In the distribution of wealth they are able to get just as much as keeps them up to working efficiency; and however Government operates on this wealth, whether to increase or decrease its sum total, their share remains the same, and they neither suffer nor benefit. If a portion of their share falls under the tax-collector's clutch, the mahajun must release to them so much more, to enable them to live. If a cess they pay to the zemindar is put a stop to, the mahajun can screw them down to a similar extent. If the crop is a failure, he must still keep them alive, as his best chance of recouping himself the following year; if a success, he leaves them the same residuum to live upon. Of course there is some fluctuation: in a good year the ryot is a little more leniently treated; in a bad year a little more harshly. On the other hand, in a good year a few persons who are nearly clear, rescue themselves from debt, while in a bad year some who were nearly free and clear, get again deeply entangled; but as regards the great bulk of the people, the only way their condition can be ameliorated is to raise their standard of

living, so as to enable them, as a body, to stand out far more than they App. do at present.

1875-76.—At the commencement of the year both the cultivators and the weavers were in a very depressed condition, owing to the drought of 1873, the paralyzing effects of the epidemic fever, and the destructive action of the cyclone of 1874; but the bumper harvest of 1875 relieved them a good deal. The ryots, however, were far from being in easy circumstances, as their whole crop had to go at the low prices prevailing, to satisfy the claims of their creditors; and by the end of April scarcely any of the year's crop remained in the possession of at least 75 per cent. of the cultivators; but their credit has been restored, and they anticipate no difficulty.

1876-77.—If the large destruction of the chief rice crop by inundations reduced the harvest reaped over the whole district to an average one, the *auv* and *loro*, amounting together to nearly one-eighth of the *anna*, were very good; while the mulberry was so good as to recall the golden season before 1873. In addition to this, prices ranged very high on account of the Madras famine, and a large surplus crop remained in store from 1875; and it may be stated that both the agricultural and trading classes were in a very prosperous condition. As a set-off against this, the Collector mentions that a large portion of the agricultural community were in debt to their mahajuns; and where this was the case, the benefit of a good year was considerably diminished, as is the misfortune of a bad one. Mr. Harrison explains that by paying up a large portion of his debt, the ryot obtains better credit, as he has to borrow more money or paddy, and on less favourable terms, in a bad year; but in either case, the chief gainer or loser is the mahajun, who cannot but support the ryot in a bad year, as the best hope of future payment, while in a good year he takes a larger portion of his earnings.

(4). *Madnapore (Irrigation Revenue Report), 1875-76.*—This year the ryots were, almost to a man, in debt to the mahajuns; they were in arrears to their zemindars, and in arrears for water-rate to the Deputy Revenue Superintendent for Irrigation. Hence all these pressed the ryot simultaneously. The Deputy Superintendent says that the zemindars were not more successful than the Government, and certain it is that they very much resented the water-rate collections; "and I" (Collector) "hear that certain of their number, even those who try to stand well with Government, have issued peremptory, but secret, instructions that they will bring their whole power to bear on any of their tenantry who lease in future."

"On the other hand, the mahajuns have been very successful in collecting their dues. The ryots know that it is a matter of life and death not to deprive themselves of future loans; and when they saw that they could not keep the crop themselves, they preferred their mahajuns to the other creditors."

"It seems to me worthy of special attention that it is this state of indebtedness of the ryots which makes it impossible for them to appreciate the benefit of the canal water, except in years in which almost the entire crop is due to it. In the present year our statistics show that the water was worth to the ryots more or less five maunds of rice per acre and twelve maunds of straw, which, even in this year of low prices, would bring

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Para. 7, contd.

them in Rs. 3 to Rs. 3-8 an acre, against Re. 1-8 payable as water-rate. On the other hand, it is quite certain that the ryots, almost to a man, think themselves losers by their leases last year (1875-76). The explanation of this is not far to find. The mahajuns take from the ryots interest at from 33 to 75 per cent., but they are quite satisfied with actually netting 15 to 20. The balance represents remissions of interest and bad debts. The effect of the better crops is to diminish their amount of bad debts, and enable them to collect a larger proportion of their outstandings; but they do not leave much more with the ryots than heretofore. Thus, a mahajun to whom the ryot owed in 1875 Rs. 40, has recovered Rs. 30, instead of (say) Rs. 24, because the ryot's land produced 21, instead of 16, maunds per acre; but he has left the ryot enough only to pay his rent and carry on three or four months until the next crop is sown.

"To a ryot in this position, the Government demand of Re. 1-8 per acre comes in the aspect of pure loss. That he has reduced his mahajun's debt to Rs. 10 instead of Rs. 16 is, to an improvident man, a matter of very little consequence; all he looks to is, that he has recovered his credit with the mahajun, and can rely on getting another advance in the approaching rains. On the other hand, the Government demand is obtrusive and urgent, and is a very definite and practical evil. No wonder, therefore, if they seem to themselves to be no better off at the end of the year than their non-irrigating neighbours, while they have the Government water dues to meet in addition to the rent, which is common to both."

1876-77.—The irrigation revenue demands were enforced mostly by process of law, the people resisting them to the last. Very little of the demand for the year was recovered during the year; but the recoveries of arrears of former years were so vigorously carried on, that the actual collections exceeded those of any previous year, except 1874-75.

It is impossible to record this result with any satisfaction, as it seems certain that the arrears, and the difficulty of enforcing payment, were mainly, if not solely, due to the extreme poverty of the people. It is melancholy to read of 12,714 certificates having been issued for the recovery of the arrears, after abandoning all claims for less than one rupee, and making remissions to a large extent on other grounds; and this in a district where the irrigators have, as a rule, dealt fairly with the Government, and have always been ready to pay, when they had the means. One can hardly read the description of the revenue operations of the year, and, it may be added, of previous years, without a wish that if the state of the cultivators is such as it is described to be by the Collector and his subordinates, irrigation, which, according to them, only enhances the difficulties of the people in ordinary years, had never been introduced at all. The Deputy Revenue Superintendent remarks: "The most potent cause about the gradual decline of the area leased is the indebtedness of the Midnapore ryots. They are involved over head-and-ears; and it is a matter of infinite regret that their debts are increasing as their connection with the Government irrigation is growing older. Excepting during the year under review, the canal irrigation as compared with the unirrigated crop has always increased the yield from three to five maunds in the acre; but the Government irrigators are not in a

position to benefit by it; all that they obtain from the fields go punctually to fill the coffers of the mahajuns, and they have finally to borrow money for the payment of the water-rate. The increased yield of the crop, if reserved for the liquidation of the Government debt, is sure to prove more than enough for the purpose; but no notice is taken of it, and when the irrigator is forced to pay for the irrigation of his land, he blames the canal for the increase of his debt.”

APP. 2
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THE RY
Para. 7, c

Again: “Attachments and sales of the debtors’ property were very frequent, and where they had not the desired effect, the debtors were arrested for the realisation of the Government dues; and it is now a very common saying within the irrigable area that the major portion of the Government irrigators have been deprived of their plough-cattle for the payment of the water-rates. This is not very untrue, as the most valuable salcable property in the possession of the cultivators are the bullocks; and where we could catch hold of them, no other movable or immovable property belonging to them was attached or sold. The number of sale-notices and warrants for the arrest of the debtors issued during the year was unusually large; yet, from the well known poverty of the Midnapore ryots, the result has not been as satisfactory as was anticipated.

“The zemindars, whose resistance to the spread of irrigation was hitherto passive, have now broken out in action, and many of them have openly prohibited their tenantry from using the canal water on the penalty of incurring their severe displeasure. They have done this with the view of securing realisation of their own dues, and of preventing their ryots from increasing their debts unnecessarily, as they call it. The mahajuns, also, have been telling the ryots not to resort to the canal any longer.

“It should be noted, in passing, that the year 1876-77, in which coercive measures on a large scale were found necessary for the realisation of the Government irrigation revenue, was one of exceptionally high prices, and, so far, peculiarly favourable to the ryots.

“The previous year having been a very favourable one for the unirrigated crops, the area leased for in 1876-77 fell from 55,345 acres to 32,681; and as the season advanced, and its real character developed, the lessees repented of their engagements, and endeavoured to evade them by every possible means—first, clamouring for a remission of the Government demand, on the ground that the water was of no value to them (which, as it has turned out, was true); and when this was refused, endeavouring to prove that water had not been properly supplied. The result has been disheartening for both Government and people.”

IV.—BEHAR—

(a).—PATNA DIVISION—

(1). *General.* 1876-77.—The material condition of the mass of population in this division is extremely low. The wages of the labouring class are barely sufficient to furnish them with the means of supporting life. They live from hand to mouth, and under the slightest abnormal pressure brings them to the verge of acute distress. Mr. Worsley shows that in Tirhoot the money value of the field

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1875-76.

have remained practically unchanged for the last sixty years. Although the prices of food-grains have risen, and are still apparently rising, one anna to one anna and a half per diem is still the usual wage of an able-bodied labourer. The apparent hardship of this is, however, somewhat mitigated by the fact that it is the custom of the district to pay the labourers in kind rather than in cash, and that, even when cash is paid, the labourer usually gets also his midday meal. At harvest time the labourers are remunerated by a percentage of the crop reaped—one sheaf of every sixteen is said to be the usual proportion. Under this arrangement, as Mr. Macdonnell points out, the labourer is worst off in a bad year; and bad years have in North Behar been very frequent of late.

The cultivating classes are generally involved in debt. "Even in time of plenty" (the Commissioner writes) "after paying the rent and the numerous cesses exacted by the landlords, very little is left to them for their support. When such is the condition of the people in the ordinary years, the failure of a single crop is sure to cause distress." This is felt most in the tracts where rice is the principal crop, as that is most susceptible to injury from drought. In the year of report, relief measures on a limited scale had to be organised on this account in parts of Mudhoobunnee, which is almost entirely a rice-producing tract, and which suffered from a failure of the autumn rains of 1875, while the other sub-divisions of Durbhunga were in comparatively good ease.

(2). *Chumparan*.—In this district 75 per cent. of the population are hopelessly in debt, exclusive of the labouring population, who live from hand to mouth. The great number of the ryots are described as insufficiently fed, and the labouring classes are said to be impoverished, and without the means of maintaining their families. The average holding is about five acres, insufficient to enable the tenant to repay to the mahajun the grain advances of former years at from 20 to 25 per cent., and to pay the rent and maintain his family as well. The indebted tenant lives on the verge of starvation, wholly dependent on his mahajun to tide him through all difficulties.

(3). *Durbhunga*.—As you advance from the Ganges towards the frontier, the material prosperity of the people varies. The farther northward you go, the less satisfactory is the people's condition. The district is purely agricultural, and on the character of the harvest depends the material condition of the great mass. The character of the harvest is determined by the rainfall, and the effect of unseasonable rainfall varies with each crop. * * It is obvious that in years when the rainfall fails, the rice-producing regions suffer more severely than others. The rubbee harvest depends to a large extent on the sufficiency of the rains in the preceding year. If those rains are markedly deficient, the soil will be devoid of moisture, and rubbee sowings will not prosper. Within those tracts near the Ganges inundation is never wanting, and consequently the riparian tracts always yield good crops.

The Tajpore sub-division is a bhadoi and rubbee-growing region. It has a large river frontage, annually fertilised by inundations of the Ganges. It is more or less independent of vicissitudes of season. Mudhoobunnee, on the other hand, is chiefly a rice plain; inundations there are more hurtful than beneficial, for they are inundations of mountain streams, often depositing noxious sand, not fertilising alluvium.

The main stand of the sub-division is the one crop (rice) most susceptible of injury from abnormal weather. * *

In the preceding pages I have endeavoured to point out the natural causes to which may be attributed, in some way, the differences which undoubtedly exist between the material prosperity of the inhabitants of each sub-division. There are, in addition, causes of an artificial nature, which combine with the natural causes to render unsatisfactory the material condition of the people of Mudhoobunnee. These artificial causes have been so thoroughly ventilated in Mr. Geddes' report (in which I generally concurred), and in subsequent reports that have been furnished to you, that it seems needless to go over the whole ground again. It will suffice, then, for me to say here that not alone to a succession of bad years and adverse harvests is due the present unsatisfactory condition of the Mudhoobunnee ryots, especially in the eastern portion of the sub-division. These causes, added to others, such as excessive enhancements, irregular realisations on their own account practised by zemindari amlahs, have helped to bring about the present unsatisfactory condition of the people.

(1). *Tirhoot. 1872-73.*—Where there is a native landlord, the Tirhoot ryot will not be allowed to enter into independent agreements with the indigo-planter, unless the landlord sees his way to getting the lion's share of the profits, and retaining his hold over the tenant; and the planter has no means of counteracting those obstacles, save by taking leases at rates which nothing but large indigo profits will cover.

1875-76.—The condition of the agriculturists varies in different parts of the Moznufferpore district. In Seetamurhee, within this year, in very many villages there has been great distress, and the villagers have had to part with their movable property to procure the means of purchasing food. Large numbers are indebted to mahajuns. There is no variation in the condition of the labouring classes from year to year; theirs is a hand-to-mouth existence, with no prospects of brighter days.

Of the people of Moznufferpore the Collector states: "Most of the lower classes are more or less indebted to their mahajuns, and the poorest and lowest classes of all are visibly deteriorating in physique and strength, &c."

"With the better class of cultivators, such as Koenes and Koormees, life has more diversity. These men are usually well off, and are able to cultivate paying crops, such as opium, tobacco, &c."

1876-77.—The marked contrast between the independent position of ryots in Bengal and the slavish subjection of ryots in Tirhoot, suggest that our code of laws and administrative system, though well suited to Bengal, have been too advanced and refined for the backward people of these parts. The great desideratum is an easy mode of proving occupancy rights, and a larger number of revenue courts scattered throughout the interior for the trial of rent suits.

(5). *Sarun.*—The zemindars of this district, wherever they have a substantial share in a village, are, as a rule, oppressive, and on the estates of many of the larger zemindars perhaps the least consideration for their tenantry is shown. * * Nothing more discreditable to large and influential zemindars could well have

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Para. 7, contd

APP. XIII. occurred than was brought out by the inquiry held in the villages along the Gunduk, which had suffered from inundation for several years past. Notwithstanding there being among them men of wealth and position, * * * the conduct of the zemindars was disgraceful in the extreme, as may be gathered from the mere circumstance that after four years, in which the crops had been periodically destroyed, the outstanding rents in all these villages only amounted to one-half their annual rental, while in no village was there as much as one year's rent in arrears. The Sub-deputy Magistrate reported that the ryots were constantly pressed for payments; that they were cruelly and heartlessly treated, and that in some instances an enhanced rental was demanded and realised from them, even at a time of such exceptional distress.

CONDITION OF
THE RYOTS.

Para. 7, contd.

1872-73.—The district is remarkable for the high rate of rent of land prevailing therein. The average rate of rent prevailing throughout the district is as high as Rs. 5-3-3 per acre, this district average being obtained from averages prepared for each pergunnah. It may be interesting to note that so far back as 1788 ordinary grain lands paid Rs. 2 per beegah, and poppy lands from Rs. 5 to Rs. 10.

The holdings of the ryots are generally small, and the ryots are for the most part all more or less indebted. The high rates of interest also tell greatly against the ryots. In the old records I find it stated that in 1787 the usual rate of interest on loans to ryots was Rs. 3-2 per cent. per mensem, and at the rate of 50 per cent. per annum where the transaction was in grain. These rates are common enough still, and they are charged with compound interest. Nothing but a system of Government loans for the relief of debt-incumbered tenures, on the security of the tenure itself, can save the ryots from falling deeper and deeper into the clutches of the mahajuns. This would, of course, presuppose a general record of all ryots in connection with the land, and compulsory registration of all changes thereafter.

Wholesale
rent in a village
in one night.

(6). *Gya*.—A general understanding exists between the ryot and his landlord that he is not to be dispossessed so long as he pays his rent, which is not fixed, but regulated by the rates current in the village. The rates current in the village are varied at the will of the landholder. No one single individual ryot is subjected to an isolated invasion of the village usage, but a wholesale enhancement upon all brings all to a common level, and such enhancement may take place, as it were, in a single night. The letter of the rules is kept, for no exceptions are made; the new rates are as current as were the old. The penalty for non-payment of rent is as lightly incurred by the cultivator; but his possession is not disturbed on that account; upon the contrary, a cultivator not in debt is viewed with dislike and suspicion, and debt is their common burden. The village landholder or the village mahajun knows that his investment is a safe one, although his only security is the helplessness of the borrower and his attachment to the soil. So long as this continues, is it reasonable to expect the ryots to devote themselves to the business of cultivation with either zeal or assiduity? If they limit their exertions to evoking from the land as much as will maintain themselves and families, and meet if possible their obligations to the landlord, is it less than should be expected? Fifty per cent. of the cultivators are in debt for grain lent by their landlords, and forty per cent. are in debt to

mahajuns for either grain or money. The latter section consists of men of some substance, who can command credit; but the former are the poorer class of cultivators, and the grasp of the landlord on them is firm and unrelaxing. He knows that they can do nothing else but cultivate; that they must cultivate their fields for food for themselves and their families; that they are wedded to the village to which they belong; and that for these reasons they will continue to stay and to endure.—*(Sub-division Sasseram).*

APP.
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SUM
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8.—*Bengal Government, No. 2122, 7th September 1878, to Commissioner, Patna Division.*

In Bengal the primary want is a ready means of recovering rents which are clearly due, and which are withheld either for the sake of delay, or in pursuance of some organized system of opposition to the zemindar. In Behar, what is most wanted is some ready means of enabling the ryot to resist illegal restraint, illegal enhancement, and illegal cesses, and to prove and maintain his occupancy rights.

Apart from the backwardness and poverty of the ryots, there are many points in the existing system of zemindari management in Behar which seem to call for speedy amendment. The loose system of zemindari accounts, the entire absence of leases and counterparts, the universal prevalence of illegal distraint, the oppression incident to the realization of rents in kind, the practice of amalgamating holdings so as to destroy evidence of continuous occupation, are evils which necessarily prevent any possible development of agricultural prosperity among the tenant class, and place them practically at the mercy of their landlords, or the *thikadars*, to whom ordinarily their landlords sublet from time to time.

* * * Nearly every local officer consulted is agreed that, while a system of summary and cheap rent-procedure is required in the interests of both zemindar and ryot, the most urgent requirement of Behar is an amelioration of the condition of the tenantry.

9. The principal suggestive matter in this Appendix is as follows:—

I. The provinces (Orissa and Behar) where the condition of the ryots was the worst, from the oppression of the zemindars, were those desolated by famine. The largest expenditure (*viz.*, 6½ millions sterling) was in Behar; and there the condition of the ryots and peasantry is worse to this day than in any other territory under the Bengal Government.

II. The 6½ millions sterling of famine relief to Bengal in 1874 was afforded at the expense of the general revenues of British India; but for that relief, and by pursuing a policy similar to that of Joseph in Egypt, the Government could have broken the permanent settlement over a very large part of Bengal.

III. From 1793 to 1859, the securities for the protection of ryots, provided by the Regulations of 1793, were set at naught by the zemindars. With a weak executive, and a

APP. XIII. police not worthy of the name, the Government, though solemnly pledged to the ryots, was powerless to afford protection (paras. 2 and 3).

SUMMARY.

Para. 9, contd.

IV. The country has profited nothing; the zemindars have benefited but little by the unrighteousness and wrong of their class: the bulk of the zemindars are poor and mostly in debt.

(a). Two collectors, too, have testified that still the zemindars in their districts, as of yore, harbour dacoits (bands of robbers) and bad characters.

(b). And of those (the majority of) zemindars who are in debt, it is inevitable but that their necessities compel them to rack-rent their tenants.

(c). While small zemindars who live upon rents are needy and rapacious, cultivating zemindars or proprietors are prosperous.

(d). The levy of irregular cesses has been mentioned in a previous Appendix. From the further testimony in this Appendix it appears that the servants of zemindars, from being underpaid, are forced to levy cesses on their own account; a circumstance evidencing the tremendous power of zemindars, under the shadow of which their underlings levy benevolences for their own behoof.

(e). This tremendous power is possessed by zemindars who, from 1793 to 1859, set at nought laws for the protection of ryots: new laws may not be of much greater avail against that power.

V. Wherever the conditions *a* to *c*, and in most cases *d* in section IV, prevail, the condition of the ryots is bad. They are prosperous in the 24-Pergunnahs or suburban district of the Presidency Division (and in Chittagong), where they enjoy fixed rents; in the eastern districts, where, through intelligence, strength of character, and force of circumstances, they have successfully asserted rights against undue enhancement of rent; in parts of the central districts, and in some northern districts where there is a demand for labour. But elsewhere the condition of the ryots is one of deep indebtedness and poverty.

VI. Wherever, through fixity of rents, as in the 24-Pergunnahs and Chittagong, or through exemption from undue enhancement and from rack-rents, the ryots are prosperous, wages are high and labour is efficient; in other parts of Bengal, where the ryots are oppressed, wages are low: they are lowest in Behar, next in Orissa (two annas a day),

three annas in Northern Bengal, four annas in Central and Eastern Bengal, and six annas in Calcutta; and the intensity of ryots' indebtedness is distributed in the same order. Referring to the wages just mentioned, the Bengal Government observed in the report for 1874-75; "So far, then, we may hope that the lot of the labourer, which was always very hard, has not become harder of late. But we must sorrowfully admit that it is almost as hard as can be borne. A plain calculation will show that the wages will suffice for little more than the purchase of food, and leave but a slender margin for his simplest wants. In Behar, indeed, a comparison of prices with wages might indicate that his lot must be hard beyond endurance."

APP. X

SUMMA

Para. 9, c

VII. We have seen that where the zemindar is the ryot's sole banker, the latter remains in the thralldom of a pure rack-rent. Where his indebtedness is to the village money-lender, the result is the same. "The creditor finds it his interest to support the ryots at the lowest scale of maintenance which they will tolerate without rebellion, and hence he leaves them as much of the one crop, or advances them as much on the other, as he finds necessary; they work, they sow, they reap for his profit; and he takes as much for principal and interest as he thinks he safely can insist upon."

VIII. In a district in Bhagulpore Division, the Magistrate, in 1872-73, "made enquiries into the condition of the ryots on the frontier territory, and the result is discouraging, in that, after very fairly weighing the respective advantages and disadvantages of both, he comes to the conclusion that the condition of the Nepal ryot is, on the whole, better than that of the British ryot. Although the smaller rent taken from the former by the Nepalese Government is supplemented by forced labour and the purveyance system, on the other hand, the illegal cesses and exactions of zemindars, middlemen, &c., and other vexations, turn the scale against the British cultivator." Respecting another class in Orissa, the Bengal Government observed in its report for 1872-73: "At the same time, the comparative well-doing of the people is somewhat alloyed by the extreme poverty of a large landless labouring class. The Collector of Balasore writes that he has known many cases where a family only ate food once in two days, and no member of the family has more than one garment. It is fortunate that there are now ample facilities of emigration."

APP. XIII.

SUMMARY.

Para. 2, contd.

IX. On the whole, a ninety years' experience of the decennial, afterwards the permanent, settlement of Lord Cornwallis leaves the bulk of the millions of cultivating proprietors, whose rights were confiscated in that settlement, in a state of impoverishment and of rack-rent to the zemindar or to the village money-lender, notwithstanding the immense amount of "unearned increment" since 1789, which, yet, has not prevented the bulk of the zemindars from remaining impoverished or in debt, and which has not accrued to the Government.

X. As in the previous Appendix, we close this summary with the interrogatory—of what earthly good to any but the money-lender, and a very few zemindars, is the existing permanent zemindary settlement? Would not the small minority of ryots who are in tolerable or in good circumstances have been better off without it? While to the great majority, of both zemindars and ryots, it has brought nothing but indebtedness and impoverishment, notwithstanding an increase of the value of the produce of Bengal since 1789 manifold greater than the increase of population.

APPENDIX XIV.

MIDDLEMEN.

1. Lord Cornwallis's associations were of a country where App. XIV. property has its duties as well as its rights: that is, has rights in virtue of its exercising the duties of property. Imbued with this feeling he conceived a zemindary settlement, the theory of which was the maintenance of large landed estates under wealthy proprietors able and willing to guide their tenants in improving agriculture, and to assist them in effecting improvements and in carrying on cultivation without recourse to the money-lender. In the expectation that the zemindar would discharge these duties of property, he was clothed with rights of property previously unheard of in Bengal, and it was hoped that his execution of these duties would establish kindly relations between him and the ryots.

2. The progress of events has dispelled this, as it has dispelled all other illusions under which Lord Cornwallis confiscated the rights of millions of proprietors. The theory of large landed estates has been destroyed in two ways, *viz.*, (1st) by the sub-division of zemindaries under the Hindoo laws of inheritance, which sub-division has already, to a great extent, impoverished the class of zemindars, and in two generations more may complete the work; (2ndly) by the creation of numerous classes of middlemen between the actual cultivators and the great zemindars who were to establish kindly relations with ryots by assisting the latter in effecting agricultural improvements. In place of this assistance, the zemindars have provided middlemen who chastise the ryots with scorpions.

3. There are two kinds of middlemen, *viz.*, those—the great majority—who are mere farmers of rents, and others who take leases of parts of zemindaries for actual cultivation of the more valuable agricultural products. This latter class is small; in it we may include indigo-planters, who, though not generally cultivating their own lands with hired labour, yet are actively interested in the cultivation by ryots of the indigo which the planters manufacture for the market. Extracts showing the effect of the system of middlemen on

APP. XIV. the condition of the country, will be presently given; it will be found that the preponderance of evidence is against the system, but it will be seen that this adverse testimony is practically directed against those middlemen who are mere farmers of rents; on the other hand, the evidence, here and there, in favour of the system, applies entirely to those middlemen who farm, not for rents, but for cultivation.

FARMERS OF
RENTS.
Para. 3, contd.

4. Sub-infeudation formed no part of the zemindary settlement established by Regulation I of 1793: it was not recognized until Regulation I of 1819, as follows:—

I. By the rules of the permanent settlement, proprietors of estates paying revenue to Government, that is, the individuals answerable to Government for the revenue then assessed on the different mehals, were declared to be entitled to make any arrangements for the leasing of their lands, in talook or otherwise, that they might deem most conducive to their interests. By the rules of Regulation XLIV of 1793, however, all such arrangements were subjected to two limitations: first, that the jumma, or rent, should not be fixed for a period exceeding ten years; and secondly, that in case of a sale for Government arrears, such leases or arrangements should stand cancelled from the day of sale. The provisions of section II, Regulation XLIV, 1793, by which the period of all fixed engagements for rent was limited to ten years, have been rescinded by section II, Regulation V, 1812; and in Regulation XVIII of the same year, it is more distinctly declared that zemindars are at liberty to grant talooks or other leases of their lands, fixing the rent in perpetuity at their discretion, subject, however, to the liability of being dissolved on the sale of the grantor's estate for the arrears of the Government revenue, in the same manner as heretofore.

II. In practice, the grant of talooks and other leases at a fixed rent in perpetuity had been common with the zemindars of Bengal for some time before the passing of the two regulations last mentioned; but notwithstanding the abrogation of the rule which declared such arrangements null and void, and the abandonment of all intention or desire to have it enforced as a security to the Government revenue in the manner originally contemplated, it was omitted to declare in the rules of Regulations V and XVIII of 1812, or in any other regulations, whether tenures at the time in existence, and held under covenants or engagements entered into by the parties in violation of the rule of section II, Regulation XLIV, 1793, should, if called in question, be deemed invalid and void as heretofore. This point it has been deemed necessary to set at rest by a general declaration of the validity of any tenures that may be now in existence, notwithstanding that they may have been granted at a rent fixed in perpetuity, or for a longer term than ten years, while the rule fixing this limitation to the term of all such engagements, and declaring null and void any granted in contravention thereof, was in force.

III. Furthermore, in the exercise of the privileges thus conceded to zemindars under direct engagements with Government, there has been created a tenure which had its origin on the estates of the Rajah of

Burdwan, but has since been extended to other zemindaries; the character of which tenure is, that it is a talook created by the zemindar to be held at a rent fixed in perpetuity by the lessee and his heirs for ever. The tenant is called upon to furnish collateral security for the rent, and for his conduct generally, or he is excused from this obligation at the zemindar's discretion; but even if the original tenant be excused, still, in case of sale for arrears, or other operation leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the zemindar. **

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IV. These tenures have usually been denominated putnee talooks, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons, who, on taking such leases, went by the name of durputnee talookdars: these, again, sometimes similarly underlet to seputneedars; and the conditions of all the title-deeds vary in nothing material from the original engagements executed by the first holder. * *

V. The tenures in question have extended through several zillahs of Bengal; and the mischiefs which have arisen from the want of a consistent rule of action for the guidance of the courts of civil judicature in regard to them have been productive of such confusion as to demand the interference of the legislature. It has accordingly been decreed necessary to regulate and define the nature of the property given and acquired on the creation of a putnee talook as above described; also to declare the legality of the practice of underletting in the manner in which it has been exercised by putneedars and others. * *

VI. It is hereby declared that any leases or engagements for the fixing of rent, now in existence, that may have been granted or concluded for a term of years, or in perpetuity, by a proprietor under engagements with Government, or other person competent to grant the same, shall be deemed good and valid tenures, according to the terms of the covenants or engagements interchanged, notwithstanding that the same may have been executed before the passing of Regulation V, 1812, and which the rule of section II, Regulation XLIV, 1793, which limited the period for which it was lawful to grant such engagement to ten years, was in full force and effect, &c., &c.

VII. (a). *First*.—The tenures known by the name of putnee talooks, as described in the preamble to this Regulation, shall be deemed to be valid tenures in perpetuity, according to the terms of the engagements under which they are held. They are heritable by their conditions; and it is hereby further declared that they are capable of being transferred by sale, gift, or otherwise, at the discretion of the holder, as well as answerable for his personal debts, and subject to the process of the courts of judicature, in the same manner as other real property.

(b). *Second*.—Putnee talookdars are hereby declared to possess the right of letting out the lands composing their talooks in any manner they may deem most conducive to their interest, and any engagements so entered into by such talookdars with others shall be legal and binding between the parties to the same, their heirs and assignees, &c., &c.

VIII. If the holder of a putnee talook shall have underlet in such manner as to have conveyed a similar interest to that enjoyed by himself, as explained in the preamble to this Regulation, the holder of

APP. XIV. such a tenure shall be deemed to have acquired all the rights and immunities declared in the preceding section to attach to putnee talooks, in so far as concerns the grantor of such undertenure. The same construction shall also apply in the case of putnee talooks of the third or fourth degree.

PUTNEE
TENURES.

PARA. 4, contd.

IX. The right of alienation having been declared to vest in the holder of a putnee talook, it shall not be competent to the zemindar or other superior to refuse to register, and otherwise to give effect to such alienations by discharging the party transferring his interest from personal responsibility, and by accepting the engagements of the transferee. In conformity, however, with established usage, the zemindar or other superior shall be entitled to exact a fee upon every such alienation; and the rate of the said fee is hereby fixed at two per cent. on the jumma or annual rent of the interest transferred, until the same shall amount to one hundred rupees, which sum shall be the maximum of any fee to be exacted on this account, &c., &c.

5. The Bengal Government, in Sir George Campbell's Administration Report for 1872-73, gave the following history of these sub-tenures:—

(a). At the permanent settlement, Government, by abdicating its position as exclusive possessor of the soil, and contenting itself with a permanent rent charge on the land, escaped thenceforward all the labour and risks attendant upon detailed mofussil management. The zemindars of Bengal Proper were not slow to follow the example set them, and immediately began to dispose of their zemindaries in a similar manner. Permanent undertenures, known as putnee tenures, were created in large numbers, and extensive tracts were leased out on long terms. By the year 1819 permanent alienations of the kind described had been so extensively effected, that they were formally legalised by Regulation VIII of that year, and means afforded to the zemindar of recovering arrears of rent from his putneedars, almost identical with those by which the demands of Government were enforced against himself. The practice of granting such undertenures has steadily continued until, at the present day, with the putnee and subordinate tenures in Bengal Proper and the farming system of Behar, but a small proportion of the whole permanently-settled area remains in the direct possession of the zemindars. In these alienations the zemindars have made far better terms for themselves than the Government was able to make for itself in 1793. It has rarely happened that a putnee, or even a lease for a term of years, has been given otherwise than on payment of a bonus, which has discounted the contingency of many years' increased rents. It is a system by which, in its adoption by the zemindars, their posterity suffers, because it is clear that, if the bonus were not exacted, a higher rental could be permanently obtained from the land. This consideration has not, however, had much practical weight with the landholders. And if a gradual accession to the wealth and influence of sub-proprietors be a desirable thing in the interest of the community, the selfishness of the landholding class is not, in this instance of it, a subject for regret.

(b). The process of sub-infeudation described above has not terminated with the putneedars and ijardars; however, gradations of sub-tenures under them called dur-putnees and dur-ijaras, and even further subordinate tenures, have been created in great numbers. And not unfrequently, especially where particular lands are required for the growth of special crops, such as indigo, superior holders have taken under-tenures from their own tenants. These tenures and under-tenures often comprise defined tracts of land; but a common practice has been to sublet certain aliquot shares of the whole superior tenure, the consequence of which is that the tenants in any particular village of an estate now very usually pay their rents to two, or many more than two, different masters, so many annas in the rupee to each. It must be added that in many cases where an estate or tenure has been sublet, the lessor has reserved certain portions, generally those immediately contiguous to his residence, in his own possession. These he may cultivate by keeping ryots upon them, or especially, if he be a European indigo planter, by hired labour.

(c). All the under-tenures in Bengal have not, however, been created since the permanent settlement in the manner above described. Depend-ant taluks, ganties, howlas, and other similar fixed and transferable under-tenures existed before the settlement. Their permanent character was practically recognized at the time of the settlement, and has at any rate since been confirmed by lapse of time.

6. Respecting the general character of the middlemen that have sprung up under the laws for protecting under-tenures held between the zemindar and the ryot, there is the following testimony:—

1. BENGAL GOVERNMENT, No. 1263, DATED 5TH MARCH 1855, TO BOARD OF REVENUE.

Forwarding extracts from a memorandum on the District of Chum-parun, submitted by the Joint Magistrate and Deputy Collector, on the occasion of the Lieutenant-Governor's recent visit to that district:—

(a.) The curse of this district is the insecure nature of the ryots' land tenure. The cultivator, though nominally protected by Regulations of all sorts, has, practically, no rights in the soil. His rent is continually raised; he is oppressed and worried by every successive ticcadar, until he is actually forced out of his holding and driven to take shelter in the Nepaul Terai. A list of all the ryots who have abandoned their villages on account of the oppression of the ticcadars within the last ten years would be a suggestive document.

(b). Another great evil is the way in which villages are continually sublet. I have known an instance where there were five different ticcadars within eight years. Of course, all these five raised the rents of the village besides taking *salaamee*, and a hundred other oppressive *abwabs*, from the unfortunate cultivators. Within the Bettiah Rajah's zemindaree, villages are frequently given in the first instance to some durbar favourite, coachman, or a table-servant, for instance, who immediately sublets it at

APP. XIV
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GENERAL
CHARACTER OF
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Para. 6.

APP. XIV. a profit. The original grantee never goes near the village, nor takes the slightest interest in it. His object is simply to make as much of it as possible within the shortest time. * *

GENERAL
CHARACTER OF
MIDDLEMEN.

Para. 6, contd.

(c). (After further extracts regarding the oppressive working of the laws for distraint and sale, the Lieutenant-Governor observed): Everywhere during his march through this district, I am desired to say, the Lieutenant-Governor found the strongest evidence of the oppression which the tenants of the Rajah of Bettiah are here described as suffering. In every village and on every roadside the Lieutenant-Governor was beset by their complaints, and ample corroboration of all they stated was afforded by the indigo-planters and the authorities of the district.

II.—PETITION OF PROTESTANT MISSIONARIES RESIDING IN OR NEAR CALCUTTA (1852).

In many cases the zemindars themselves are not aware of all the misery which is inflicted in their name upon the ryots by the agents whom they employ in collecting the rent. These middlemen are, in truth, the greatest tyrants. And as such middlemen would have to be employed by Government in case the ryotwari system should be substituted for the zemindary system, it is clear that such a change would not be of any great advantage to the ryots, probably of none at all. It is well known that the middlemen employed by humane European indigo planters are in many cases as oppressive as those employed by native zemindars. What is wanted is that the ryot should have direct access to his landlord, and that the interests of both should be the same. And this object would probably be accomplished, in process of time, if, by legalizing the commutation of the land-tax, the prospect of becoming free landholders was open to capitalists. (*Alexander Duff and 20 other signatures*).

III.—ZEMINDARS, 24-PERGUNNAHS (February 1857).

The immediate effect of the enactment of the proposed law will be the multiplication of these middle-tenures. That the multiplication of middle-tenures is an unmitigated evil, is a fact proved by the circumstance that rent is highest and the rights of the resident tenantry have suffered the most in those districts of Bengal in which middle-tenures abound, it being notorious that middlemen are the most oppressive and extortionate of landlords all over the world.

IV.—BENGAL BRITISH INDIAN ASSOCIATION (May 1857).

The advocates of this Bill would seem scarcely to have enquired to what extent the new security given to middle-tenures is called for by experience or sound policy, as proved by actual facts, rather than theoretical clamour. Since the date of the settlement, it is notorious that these tenures have largely increased, both in number and in value, and do continue to increase. Then, the policy of increasing middle-holdings is unhesitatingly negatived by all practical men. Your petitioners affirm that, were evidence upon the point taken at the Bar of your Honourable

Council, it would soon be apparent, and conclusively proved, that App. rent is highest, and the interests of the cultivator have been most neglected or borne down, wherever middle-tenures abound, and that the worst of landlords are the middlemen, whom it is the object and necessary consequence of the proposed legislation to encourage and to multiply. Your petitioners say this, not in abuse or condemnation of the holders of such tenures (which are not sparingly shared among your petitioners themselves), but as showing the necessities of their position, and the impolicy of holding out a premium for an extension of the class.

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GENE-
CHABAC
MIDDLE
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Para. 6.

V.—MR. A. SCONCE, COMMISSIONER OF CHITTAGONG (*19th February 1850*).

The bane of the landed interest in India, that is, of all those who are primarily interested in the land—the landholders on the one part, and the actual cultivators on the other—is the creation of sub-tenures for the benefit of those who seek to lease rents, not lands; who speculate upon the opportunity they may be enabled to command of realizing extortionate rents; and who, being neither landlords nor cultivators, are permitted to absorb such an amount of the profits of the land as is calculated to paralyze the efficient operations of those with whose prosperity the prosperity of the entire country is most nearly identified. We require no law to facilitate farming of rents; but, on the other hand, as it must always happen that ryots of land already in cultivation will be found located within the areas which intending farmers, whose object is either to clear waste land, or to cultivate more profitable products, may wish to lease, it is perfectly just to recognize, and it is perfectly easy to distinguish, such cases from others in which a permanent intermediate interest is sought to be alienated.

VI.—MR. A. FORBES (*13th February 1850*).

I consider it necessary to state my reasons in detail for not granting further protection to middlemen (persons between the cultivator and the zemindar) on the pretext of their being capitalists and making advances to the actual cultivator. It would obviously lead to frauds on the purchasers, and foster and perpetuate a most oppressive system, as the middlemen would practise every art to keep the cultivator in debt, that he may continue to receive the produce of the particular crops that the cultivator is compelled to grow.

VII.—MR. E. CURRIE, LEGISLATIVE COUNCIL (*17th May 1856*).

Even with respect to putnees, dur-putnees, se-putnees, and so on, he for one was not prepared to say that the conditions under which under-tenures had existed since their first creation, some 50 years ago, and which were recognized and confirmed by Regulation VIII of 1819, ought to be abrogated, or that the terms of the contracts under which they held should be set aside. He believed that the direct tendency of the putnee system of subletting was so to grind down the ryot, that every new link in the chain of under-tenure was an additional burden on his back.

APP. XIV. VIII.—CAPTAIN W. H. CRAUFURD (26th May 1856).

GENERAL
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MIDDLEMEN.

Para. 6, contd.

The Honourable Member representing the Government of Bengal has gone so far as to declare, in his place in Council, that putnee and other tenures of that class are the scourge of the country, and that the legislation contemplated is peculiarly for their security, and calculated to tend to their multiplication. Any argument that I might urge to show that the creation of these tenures usually relieves the ryots from the exactions of an embarrassed landlord, and replaces him by one with whom the primary object is not the collection of rent, but the encouragement of agricultural operations, might be looked upon with suspicion. But the present head of the Government (Sir Frederick Halliday) has, fortunately for me, recorded his opinion on this point in the following words (see paragraph 7, section II).

7. The policy of discouraging or encouraging under-tenures is discussed in the following extracts:—

I.—LORD DALHOUSIE (21st October 1852).

(a). I am still, however, inclined to think that *perpetual* leases ought not to be favourably recognized, except in the case of manufactories, tanks, or permanent buildings. I conceive that a perpetual lease for any agricultural purpose can hardly be advisable.

(b). I regard the protection of under-tenures from the effects of a sale for arrears of public revenue as of the highest value for giving that security to the property of the ordinary cultivator, or of the man of enterprise and capital, without which it is hopeless to expect any substantial improvement in Bengal, or any material increase of its resources.

II.—MR. F. J. HALLIDAY (14th October 1839).

If ever any great improvement is to happen to this country, it must come by means of the introduction, as *under-tenants* of zemindars, of men of skill, capital, and enterprise.

III.—MR. J. LOWIS (19th June 1840).

The agricultural resources of all countries are, I believe, developed best and fastest by the farmer—the man, that is, who subsists mostly upon the profits of capital applied to land. To afford this man adequate security, is to ensure the application of the largest portion possible of intelligence and capital to the land; thus enlarging to the utmost the true sources whence all revenue, whether settled permanently or not, is derived, and widening the marginal excess of rent over revenue, which the settlement of 1793 bestowed upon and endeavoured to secure to the zemindars of Bengal.

IV.—MR. WELBY JACKSON (16th June 1840).

The provision in favour of *bond fide* leases of 20 years appears to me objectionable in this respect: the zemindars have never had the right to

create such a lien on the property, and it would be an alteration of the App. X whole system to allow them to do so now. * * * If the zemindars or their farmers were in the habit of laying out capital on the improvement of their lands, it would be an object to retain them; such a zemindar would pay his revenue, and would not run a chance of being ousted: but how few zemindars lay out the smallest sum; in this manner, how few farmers? The farmers, and indeed the zemindars too, generally collect as much as they possibly can; they make a very high nominal rent-roll, and then collect as near as they can to the amount; but it is almost always impossible to collect the whole, and their ryots are thus always in their debt, though the balances are nominal. The only farmers who are really improvers are the European indigo and other manufacturers; by creating a demand and advancing the means of producing the raw material, they extend and improve the cultivation: these men it is desirable to support.

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GENERAL
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Para. 7, co

V.—MR. H. T. PRINSEP (*8th July 1841*).

In the first place, protection is given to the ijaradars, or mere tushseel people, who took their lease with no speculation of cultivating and laying out money in improvements, but merely on a calculation of what they could grind from other under-tenants by skill in Regulation processes and chicanery, and perhaps even by violence.

VI.—MR. A. SCONCE (*4th April 1857*).

I would repeat what I said in 1850 (paragraph 6, section IV), that we need no new law to facilitate farms of rents. Yet the taluks and other intermediate tenures that press for permanent recognition are nothing else but farms or assignments of rents. Talukdars are not agriculturists; and when we are invoked to develop agriculture, let it never be forgotten that it is from the ryot—from the man who ploughs and sows, and not the talukdar—that the development is to come. It is time to part with the notion that agriculturists cannot distinguish between profitable and unprofitable crops, and that they will not adopt the former in preference to the latter. No men, according to their simple lights, incur greater sacrifices to secure their harvests; and as freely as any set of men will they change the course of their familiar agriculture if the change promises to pay them better. The most erroneous of all notions is to describe or limit the development of agricultural resources by the payment of advances, or to measure, for example, the advantage of advances by the manufacture and export of indigo. If upon that we build agricultural development, we build upon deception and delusion. Who that has seen has not admired the careful, almost triturated, cultivation of tobacco and wheat fields in the higher lands of rice countries? Who grow safflower? Who produce the immense crops that supply our greatest market with jute and oilseeds? From such facts are the objects of agricultural improvement most truly presented to us, and the means by which it may be attained most correctly indicated. Our greatest and never sleeping purpose, it seems to me, should be to secure to our agricultural population the utmost benefit of their labour, and to disencumber them—always within the bounds of reason and law—from an intend-

APP. XIV. ing succession of middle-tenures ; this purpose was set forth in clause 1, section VIII, Regulation I, 1793 ; and instead of redeeming what I will call the pledge then undertaken to exact laws necessary for the protection and welfare of the ryots and other cultivators of the soil, the tendency of the present Bill will practically be to interpose a screen between our sight and theirs, by fostering the creation of middle-tenures, and perpetuating them against all contingencies.

GENERAL
CHARACTER OF
MIDDLEMEN.

Para. 7, contd.

8. The extracts in this Appendix contain a general and unqualified condemnation of those middlemen, the bulk of the class, who are mere farmers of rents.

APPENDIX XV.

WASTE LANDS AND MISCELLANEOUS.

1.—WASTE LANDS.

I.—LAW AND CONSTITUTION OF INDIA.

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Page 92, et c

(a). We see, therefore, that the practice of India corresponds with the written law in this; for in the reign of Akbar it was the cultivated land only that was measured; it was the cultivated land whose value was ascertained; and it was the cultivated land that afforded the datum for making the decennial settlement; and it was from the records established on that basis that the revenues of the Lower Provinces were limited for ever by what is called the permanent settlement. Consequently, by the law of India, all the uncultivated land (which is, according to Mr. Colebrooke, "one-half, and about half of which is capable of cultivation, the other half irreclaimable, or on rivers and lakes") of the whole of the three provinces still remains the property of Government; for, without an *express equivalent and specification of revenue*, there existed no power legally capable of giving them away, by any lawful deed of conveyance or any legal mode whatsoever.

(b). Nor, in equity, can these lands be deemed to have been given away, because no equitable value was put upon them by either party to the permanent settlement. It was the productive land, the rent-paying land, that was the subject-matter of settlement between the parties; and that rent-paying land consisted of "villages;" for all the land of the country resolves itself into the land of such or such a village. There are larger and smaller divisions; but this is the most definite and best known, and therefore I follow the native registers in adopting it.

(c). The quantity of land belonging to every village is stated in beegahs; the boundaries perhaps specified, but probably not well defined. One of the contracting parties at least (the zemindar) was, therefore, bargaining for a specific quantity of land. This quantity of land was the land in cultivation; and must have been so. The zemindar had no capital to enable him to offer a rent to Government for land that was not immediately productive; nor could Government have believed that he had, without entertaining the most extravagant fancy. I say, therefore, that not only the law, but even the equity of the case, is against the alienation of the uncultivated land. * * *

(d). The Act, under the authority of which the permanent settlement was made, gave no power to grant waste land. It is the 24th Geo. III, chap. 25, sec. 39. By this section, the Court of Directors were required to give orders for settling and establishing "upon principles of moderation and justice," according to the laws and constitution of India, the permanent rules "by which the tribute, rents, and services of the rajahs, zemindars, polygars, talukdars, and other native landholders, should be in future rendered and paid to the United Company."

(e). Here there is no authority to give away waste land, or uncultivated lands, or, indeed, land at all; nothing in the most remote sense author-

App. XV. izing the giving any *permanent right* to land of any kind. It is to "fix *permanent rules* for the payment of *rents*, tributes, and services due from native landholders," such as *rajahs*, *zemindars*, *polygars*, *talukdars*, to the Company; affording a presumption, indeed, in direct opposition to the idea of property in the soil existing in any of the classes of persons mentioned. And these "rules for paying rents" were ordered to be fixed "according to the law and constitution of India," which debars even the Emperor himself from giving away one inch of waste or any other land without an equivalent.

STATE'S RIGHT
IN WASTE LANDS.

Para. 1, contd.

2. From the immense extent of waste land at the time, this stretch of authority, beyond even the power possessed by the Emperor, was unjustifiable: thus—

Law and Consti-
tution of India,
page 167, and
Revenue Selec-
tions, Vol. I,
page 16.

(a). Lord Cornwallis at the same time estimated no less than a third of the Company's territory to be a jungle, which Mr. Colebrooke confirms, and states that "the researches on which I (Mr. Colebrooke) was engaged at the time, furnish me with grounds for the opinion that the estimate may, with great approximation to accuracy, be understood as applicable to lands fit for cultivation, and totally exclusive of lands barren and irreclaimable." Here, then, we have confessedly one-third of the whole cultivable land (and one-third of the whole "gross collections from the cultivator, for charges of collection and intermediate profits between Government and the rental") avowedly relinquished by the Government; and we are told that this should be the basis of the permanent settlement.

3. The Emperor's power to give away waste land was restrained by the Mahomedan law, which limited, very precisely, the application of the revenue from land to specific objects: thus—

(a). The khurauj and the jazeera or capitation tax, &c., shall be appropriated, says the Mahomedan law, to the use of troops, in building and maintaining fortifications, guarding the highways, in digging canals, in maintaining those who devote their lives to the good of the people (as kazees, mooftees, mooazzins, public teachers), in feeding the poor, paying collectors of the taxes, building and repairing mosques, bridges, &c. "Finally, every Moslem in want has a claim on the public treasury, according to his exigencies, for himself, wife, and children under age, for decent food and raiment; but holy men, and those learned in the law, the descendants of Aalee and the noble, have a claim to a greater share, because dignifying them, dignifies the sons of Islaum."

Page 61.

(b). "Four classes of men," says the *Ajeen Akbaree*, "have lived on pensions granted them for their subsistence: 1st, the learned and their scholars; 2nd, those who have retired from the world, holy men, and goobanusheen; 3rd, the needy, who are not able to help themselves; 4th, the descendants of great families (an error in the translation for descendants of Aalee), who from false shame will do nothing for themselves; besides the army, the pay of which amounted to Rs. 77,29,652."

Pages 65 & 63.

(c). The sovereign has the power of making a grant of waste land on condition that the grantee pay the assessment to which such land is liable for what he does cultivate. * * The sovereign cannot make a

donation of the khurauj of the lands of an individual to the owner, unless the donee be of those to whom the law assigns a public maintenance (literally, "an object of, or one entitled to, a share of the khurauj"). But should the sovereign assign the khurauj to the owner, and leave it with him, the owner being of those who are entitled by law to share in the khurauj, it is legal, according to Aboo Yoosuf's opinion; and this is decided law, as Kazee Khan states. Imam Moohummud dissents. This, however, it is evident, can only be a personal grant, and must, at all events, cease with the existence of the individual to whom it is made, inasmuch as the qualities or circumstances which render one individual an *object* entitled to share in the khurauj, *viz.*, his being a soldier, kazee, mooftee, teacher, collector of revenue, a police officer, or other public functionary of Government, a learned or holy man, are altogether personal.

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Para. 1.

(d). By the Mahomedan law, the sovereign, as we have seen, has no power to give away public property of any kind without an equivalent. He cannot bestow a lakheerauj grant in any other way than that above mentioned, *viz.*, by an appropriation of the khurauj of one's own estate to the owner himself, with the condition attached of his being one of those classes of persons to whom the law assigns a public provision. An appropriation of this kind would be necessary to accompany even a religious endowment, if exemption from the revenue were designed; and this would be permanent, if the body or class endowed continued to exist as objects of benefice, but would cease to be so with the existence of the last incumbent, who might come under the description of persons entitled by law to the benefit of a public maintenance. Page 70.

(e). So little power is by the Mahomedan law vested in the sovereign to give away the property of the public, that although, on the eve of a battle, he may hold out special rewards of an additional share of plunder in order to encourage the troops, yet, after the battle is over, he cannot give away an atom of prize property beyond the regular share; except, indeed, from the share of the crown, which is a fifth of the prize property.

4. Sir John Shore and the Court of Directors both considered that waste lands should not be included in zemindaries, but be reserved as a source of income in the future: thus—

I.—SIR J. SHORE (8th December 1789).

Another proposition is, that the waste lands remain as crown lands for future allotment, as proposals for them may be tendered. Para. 41.

The first question that arises upon this is, to whom do the waste lands at present belong? Are there no zemindars proprietors of them? If there are, is Government, by usage or law, authorized to take them away, or have the proprietors consented to part with them? These are preliminaries which ought to be examined and decided. Para. 42.

But I shall consider the proposition in another point of view. The limits of the villages are left undetermined by any marked boundaries. The quantity of land in each, although stated in beegabs, is confessedly unascertained. The proprietors, therefore, may extend their possessions, Para. 43

APP. XV. and encroach upon the present waste lands gradually; and this is probable, they will attempt, instead of undertaking the cultivation of waste lands under any specific engagement to pay revenue for them. The proposition must, therefore, rely upon a new accession of inhabitants from foreign countries; and, in any other sense, it appears to me to be useless.

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Para. 4, contd.

Para. 44.

Notwithstanding the objections stated by Mr. Law, to determine the extent of the villages by ascertained boundaries, I still think this should be done, to guard against the consequences of ill-limits. * * To ascertain the limits of the land by boundaries, is rarely, I conceive, necessary to measure it. As they are now defined, there is no criterion for determining the quantity. * * I think the Government ought to know what it gives, and the proprietor what he receives; and, provided limits were marked out, the term "measureless" would be unimportant. The difficulties of the operation are not means, in my opinion, so great as Mr. Law apprehends. He says the boundaries of cultivated villages are well ascertained; if so, let them be marked and recorded.

Para. 45.

If the plan should, in its progress, be attended with the improvement expected from it, the limits of the estate will then become very important; and some time or other there will be a necessity for defining them. * * But if ever necessary to be done, the limits may certainly be marked with more facility at this time than they can be at a future period.

II.—LETTER FROM GOVERNOR GENERAL TO COURT OF DIRECTORS *March 1793.*

(See Appendix IV, para. 6, II.)

III.—SELECT COMMITTEE (1812).

Report,
1.

Referring to the estimated amount at which the Government debt might be fixed in the permanent settlement, the Court of Directors observed that they did not wish to expose their subjects to the burden of oppressive practices by requiring more; yet, on consideration of the extent of land which lay waste throughout the provinces, and adverted to what had formerly been the practice of the native government of participating in the resources derivable from its progressive cultivation, they would be induced to acquiesce in any arrangement which might be devised, with a view to secure to the East India Company a participation in the wealth derivable from such a source; provided it could be effected without counteracting the principal object of encouraging industry, and be reconciled with the principles of the system which was about to be introduced.

IV.—COURT OF DIRECTORS (15th January 1819).

Sess. 1831-32,
Vol. XI, APP. 11,
page 100.

We have already enjoined you to reserve the waste lands in the permanent settlement; but we have not been able to satisfy ourselves as to the nature of the interest possessed by the zemindar in the waste lands in those districts which have been permanently settled.

construction seems to be, that his power over them is absolute and unconditional, and that he is at liberty to contract for the occupation of them at whatever rates he can obtain. It is, however, the opinion of many considerable authorities, that on the leases of waste as well as of other lands, the pergunnah rates form a standard not to be exceeded (paragraph 67).

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Para. 1, contd.

V.—REGULATION II, 1819.

(a). It is hereby declared and enacted that all lands which, at the period of the decennial settlement, were not included within the limits of any pergunnah, mouzah, or other division of estates for which a settlement was concluded with the owners, not being lands for which a distinct settlement may have been made since the period referred to, * * shall be considered liable to Government assessment in the same manner as other unsettled mehal.

(b). The foregoing principles shall be deemed applicable not only to tracts of land, such as are described to have been brought into cultivation in the Sunderbuns, but to all churs and islands formed since the period of the decennial settlement, and generally to all lands gained by alluvion or dereliction since that period, &c., &c.

VI.—RESOLUTION OF GOVERNMENT (*1st August 1822*).

His Lordship in Council considers it to be well established that the Native Governments, in the exercise of their prerogative, were in the habit of making grants of unappropriated waste land. * * Ordinarily, indeed, His Lordship in Council would be disposed to consider the assumption to be justly open to Government, that wastes unappropriated are the property of the State, unless the contrary can be clearly shown, the proof resting with the zemindar; and arguing from the analogy of extensive principalities, our revenue officers appear in several cases too easily to have admitted indefinite claims to waste, on the part of persons whose property ought to have been distinctly restricted to the limits assigned to them by the public records (paragraph 228).

Sess. 1831-32,
Vol. XI,
page 209.

VII.—MR. SISSON (*2nd April 1815*).

The additional profits which were to accrue to the zemindar from the permanent settlement of his estate were confined to but one source, *i.e.*, extension of cultivation. He was vested with no power to enhance the rents of his tenants, with reference even to the waste lands which his exertions might bring into cultivation; he was peremptorily restricted from exacting a higher rent than that which lands of a similar quality might be rated at in the nirkhbundy of his estate. The profit that was to arise to him from bringing the waste lands into cultivation was the enjoyment of the Government's share of their produce, in addition to his own.

Revenue Selections, Vol. I,
page 355.

claim-

APP. XV. VIII.—MR. J. MILL (*4th August 1831*).STATE'S RIGHT
IN WASTE LANDS.

Para. 1. contd.

Third Report,
Select Com-
mittee, 1831-32.
Questions 3261
to 3267.

Many of the zemindaries that were settled in 1793 contain a considerable portion of waste land which the zemindars have been permitted to cultivate without any further assessment. The consequence has been that the value of those estates where waste land susceptible of cultivation has been cultivated, has greatly increased, which is to a great degree the reason of the very great diversity in what appears to be the value of the estates, the number of years' purchase that one estate sells for beyond another.

There is a question whether the Government had any right to limit the cultivation of waste land by assessing a portion of it. What has been supposed to determine the point is the question—what was naturally, according to the just interpretation of the law of 1793, to be considered as included within the limits of an estate? If there is any portion of waste that by no proper construction, at the period of the permanent settlement, could be considered as within the limits of that estate, it is held to be the property of the Government; but the Government have compromised the question, and, as it appears to me, in a very liberal manner. They have come to a resolution that, even though the property in the waste might be considered as doubtful, if it is a moderate quantity lying between one estate and another, it shall be considered as the property of the zemindars, according to an equal distribution among themselves; but where there is any vast portion of waste, comprehending a considerable portion of country, which lies distinct by itself, and is only bordered upon by a zemindary, as it cannot, with any propriety, be considered as coming within the limits of any estate, it is held to be the property of Government; but even there they come to a further compromise with the zemindars, that as far as the zemindar has cultivated any portion of that waste, it shall be regarded as his own property, as much as any other part of his zemindary; and not only so, but that such a proportion of waste as is in general annexed to cultivated land, shall be considered as his in addition; but beyond this, that a line shall be drawn, and the rest shall remain the property of the Government, to be disposed of as they shall see best.

Q. 3268.—Was there not a considerable dispute, at various periods, with regard to the extent to which the zemindars had a right to take the waste? There were doubts in regard to those cases where there was a portion of waste surrounded by different estates. By a liberal construction of the permanent settlement, it might be considered that it belonged to the zemindars whose estates surrounded it; and so the Government have allowed it to be considered. The only case where they have now drawn a distinction is that of large tracts of waste country that stand by themselves—as the Sunderbunds, for example.

IX.—MR. J. N. HALHED.

The code provided for the annexation of the neezjote or nankar lands held by the zemindars, free of revenue, to the khalsa or revenue land, on the formation of the decennial settlement, as also for the resumption

of the *chakeraun* lands, or portions set apart in lieu of money-payments, for the support of the police and other establishments of local public officers; but as there were no means of ascertaining the correctness of the returns made by the zemindars of these lands, under a system which interdicted reference to measurements, and comparative detailed statements of cultivation and produce, the greatest portion of these neezjote and *chakeraun* lands merged in the jurisdictions acquired by the landed aristocracy, under the perpetual settlement, without being accounted for, and are held by them absolutely without payment, they having ejected the public servants who formerly held them, and who having no other means of subsistence, became robbers.

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Part 6.

As the zemindars in the permanently assessed provinces have appropriated to themselves all the *chakeraun*, all records relating to which have now been lost or destroyed through their machinations, they should be required to keep up, at their own charges, an efficient establishment of subsidiary police in each village or estate.

X.—SIR GEORGE CAMPBELL (*1st June 1864*).

There is very much in the custom of India to show that the ryots of each village have a prior claim to cultivate the waste of the village, and to take up land abandoned by other ryots; and, so cultivating or taking without special stipulation, to hold on the same terms as those on which they have their original holdings.

XI.—MR. W. S. SETON-KARR (*2nd June 1864*).

Now, the mass of ryots who have not held from before the permanent settlement, or who cannot prove by irrefragable evidence that they have so held, who are neither mokurraridars, nor even khoodkaht ryots with rights dating from 1793, must be very considerable. There must, I say, be a very large class of respectable and substantial fotedars, resident on their own homesteads, and cultivating lands on the plain at no great distance therefrom, who have now held for two generations, but who have either held without pottahs, or with pottahs in which neither the term of years is fixed, nor are the rents declared unalterable, and who may, therefore, be any day liable to enhancement * *. I am not aware that the permanent settlement in any way altered the common law of the country as to ryotly tenure in land, or that there are good grounds, legal or political, for placing ryots whose tenures date, say since 1800, or who cannot show positively that their forefathers held their lands before 1793, in a much more disadvantageous position than others who are fortunate enough to be acknowledged as the lineal descendants of those concerning whom Shore and Hastings wrote copious minutes.

5. The limitation of the demand upon the ryot for waste land brought under cultivation to the general rates of the pergunnah, is affirmed in the preceding Sections, IV, VI, and X. As the pergunnah rates, or those paid by the khoodkaht ryots, were the highest or maximum rates in the pergunnah,

APP. XV. the impossibility of the assessment upon waste lands exceeding those rates consistently with indispensable inducements to ryots to cultivate those lands, is self-evident. Nevertheless, as the point is of importance, further testimony on the subject may be cited.

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IN WASTE LANDS.

Para. 5, contd.

I.—BAILLIE'S LAND TAX OF INDIA.

Page XIV.

(a). Waste land when brought into cultivation by a *zimnee* (infidel) is in all circumstances subject to *khiraj*; when cultivated by a Mooslim, it is *ooshree* or *khirajee*, according to the character of the neighbouring¹ land.

Page XXIII.

(b). The law of India under the Mahomedans was the Hanneefa Code, according to which waste land is so absolutely in a state of nature, that it may be acquired by the first occupant who reclaims or brings it into a state of cultivation. What amounts to reclaiming is explained in the fifth chapter. According to Abou Hanneefa, the permission of the Imam is necessary, but according to the other two, it is not necessary; and being the majority, it is presumed that their opinion constitutes the law upon the subject. When brought into cultivation, whether with or without the Imam's permission, there is no doubt that land which was waste is liable to the *wazeefa*, if reclaimed by a *zimnee*; and to either *ooshree* or *khiraj*, according to the nature of the adjoining land, if cultivated by a Mooslim.

Page 3.

(c). When a person has brought waste land into cultivation, if it be contiguous to *khirajee* land it is *khirajee*, and if it be contiguous to *ooshree* land it is *ooshree*. But this only when the person who brought it into cultivation was a Mooslim; for if he were a *zimnee*, the land would be *khirajee* even though it should be contiguous to *ooshree* land.

(d). Property in waste is established by reclaiming it with the permission of the Imam, according to Abou Hanneefa, and by the mere act of reclaiming, according to Abou Yoosuf and Moohummud; and a *zimnee* becomes the proprietor by reclaiming, in the same way as a Mooslim would acquire the property.

(e). Dead or waste land is land on the outside of a town for which there is no owner, nor any one who has a particular right in it. * * Qoodooree has said that what is Adee ("what has been long spoiled or desolate"), or has been long desolate, and is without a proprietor, or if it ever was appropriated within the time of *Islam*, its owner is unknown, and the land itself lies at such a distance from any village, that if a person were to stand on the nearest limit of cultivated land and cry out, his voice would not be heard in it, is waste;—and Kazeer Fakhr-ood-deen has said that what has been said is most correct, that when a man standing on the verge of the cultivated land of a village cries out at the pitch of his voice, whatever place his voice reaches to is to be considered as within the confines of the cultivated land, because the people of the village have need of so much for pasture to their cattle, and for other purposes; and that what is beyond this is waste, when it has no known

¹ i. e., the pergunnah rate.

owner. Abou Yoosuf has made distance from a village to be determined, as aforesaid, a necessary condition; but, according to Moohummud, regard is to be had to the actual fact whether the people of the village derive any advantage from the land or not, though it should be near to the village; but Shams-ool-Aëmmah relies on what was approved by Abou Yoosuf (*Kaaze*).

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Para. 5, contd.

This last extract (*e*) is suggestive. *Firstly*, it shows that Mahomedan law recognized village communities, by recognizing a village's proprietary right in a certain amount of waste land external to the actual cultivation of the village; *secondly*, the particular mode of determining what was waste land involved a continual advance of the village lands upon the waste; for, as the space beyond the confines of cultivated land over which the human voice could be heard, constituted the village common, every fresh cultivation of that common by the growth of village population caused the common to encroach upon the waste. In other words, we trace here, *1st*, the Poor Law Fund under Native rule, *viz.*, the reservation of waste land for the growth of population, subject to payment of the prescribed land tax; *2nd*, the direction in which khoodkasht rights multiplied outside the lands of—and irrespectively of hereditary rights derived from—the original settlers in the village. The new land reclaimed from waste by the descendants of those settlers became, for the former, their *own land* (khoodkasht), subject only to the payment, not of the lower rent paid by pykashts, but of the higher or maximum pergunnah rate, *i. e.*, a rate which was fixed by custom. Thus the two elements of a title by prescription, *viz.*, occupancy of what was *res nullius*, and a rate of rent determinable and known in each village by custom, were constantly present. The custom or prescription was not terminated by the permanent settlement; its continuance was explicitly recognised in the Huftum Regulation VII of 1799, which enacted that “the Courts of Justice will determine the rights of every description of landholder and tenant, when regularly brought before them; whether the same be ascertainable by written engagements, or defined by the laws and regulations, or depend upon general or local usage, which may be proved to have existed from time immemorial.” And thus the real genuine right of occupancy, that which the Law and Constitution of India recognized, grew and extended with the increase of population, and through the encroachment of cultivation upon the waste.

APP. XV. II.—SIR JOHN SHORE (18th September 1789).

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Para. 5, contd.

Whether the proportion of jungle is more or less than a third of the Company's territorial possessions in Hindostan, I know not, but with respect to the past, I am, from my own observation, as far as it has extended, authorised to affirm that since the year 1770, cultivation is progressively increased, under all the disadvantages of variable assessments and personal charges; and with respect to the future, I have no hesitation in declaring that those zemindars who, under confirmed engagements, would bring their waste lands into cultivation, will not be deterred by a ten years' assessment from attempting it. If at this moment the Government chose to confer grants of waste land in talookdary tenure, under conditions that no revenue should be paid for them during five years, and that at the end of ten, *the assessment should be fixed according to the general rates of land in the districts where the tenures are situated*, they would find no difficulty in procuring persons to engage, even upon less favourable terms. If I mistake not, *the grants in Ramghur were precisely on these principles, which are conformable to the usage of the country.*

The passages in italics place beyond doubt that waste lands brought into cultivation paid, in no case, any rent higher than the old established pergunnah rates.

III.—REGULATION XLIV, 1793.

The dues of Government from lands consist of a certain proportion of the annual produce of every beegah of land, demandable, according to the local custom, in money or kind, unless Government has transferred its right to such proportion to individuals for a term or in perpetuity, or fixed the public demand upon the whole estate of a proprietor of land, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public, so long as he continues to discharge the latter.

The same definition of the Government's due, and of what the Government made over to the zemindar in the perpetual settlement, occurs in the preamble of Regulation XIX of 1793. The transfer to the zemindar was of the proportion of the produce of the land, in money or in kind, according to local custom, which was payable by the ryot to the Government, less the Government land revenue. With regard to waste land, therefore, it was the whole of merely the proportion of produce demandable from the ryot according to custom. By custom, the proportion demandable was only the pergunnah rate, and in Bengal the pergunnah rate demandable, according to custom, was in money, and not in kind; that is to say, what the Government made over to the zemindar in respect of waste lands was the pergunnah rate as

payable in money at the date of the permanent settlement. APP. XV.
 If, as shown in another Appendix, the pergunnah rate was STATE'S RIGHT
 not liable to increase beyond its amount in 1793, neither was IN WASTE LANDS.
 the rate leviable on waste land brought into cultivation liable Para. 5, contd.
 to increase beyond the amount of the pergunnah rate in 1793.

IV.—REGULATION XIV, 1793, SECTION VI.

In cases in which no engagement may exist between the defaulter and his dependent talookdars or ryots, the Ameen is to collect from them according to the established rates and usages of the pergunnah.

If, thus, only the established rate of the pergunnah was demandable, in the absence of an engagement, for lands long under cultivation, and presumably accessible to markets, and possessed of attractions or advantages which ensured their occupancy and cultivation, much more than must it have been impossible that, by any custom, rates higher than the established rates of the pergunnah could be leviable on waste land brought into cultivation by ryots who had to be attracted to it. And in Regulations XLIV of 1793 and XLIII of 1795, the waste lands allotted to invalided native officers and private soldiers were, on the death of the invalids, continued to their heirs at a perpetual rent which the collector, not the zemindar, assessed on fixed principles, though the amount was payable to the zemindar. His title to any future increase of rent for these reclaimed waste lands on account of a rise of prices was disallowed.

V.—MR. H. STARK, CHIEF OF THE REVENUE DEPARTMENT, INDIA BOARD OF CONTROL (14th February 1832).

Q. 198.—If, subsequently to permanent settlement, jungle or waste lands should be brought into cultivation, would that land be taxed? It depends upon whether it was included within the boundary of the district permanently settled; if it was not included, of course the Government have a right to tax it; there have been many disputes upon it. I cannot give a better notion of the opinions of zemindars upon that than by saying that many of the zemindars whose lands border upon the Sunderbuns, claimed the sea as their boundary where it was 60 or 70 miles off. The Government resisted those claims; but in cases where the zemindar was allowed to include the improved estate within his boundary at a fixed rate of half a rupee per beegah, the right of the cultivators to hold the lands at a fixed rate was at the same time secured to them. The zemindar as proprietor can only demand for them one quarter rupee in excess of the Government jumma; so that the original clearer of the land holds it subject to a fixed rent of three quarters of a rupee, and if it yields him a profit of 100 or 150 per cent., that is his profit. Parl. Papers,
Sess. 1831-32,
Vol. XI.

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WASTE LANDS.

PAGE 6.

6. Property in waste land could not be acquired, except by cultivating it, and paying to the sovereign rent for it at the pergunnah rate. Hence, the zemindar, whose title as proprietor of land was created in the way shown in the following extract, had no inherent title to waste land; whilst, as has been seen, the gift of it to him in the permanent settlement was by a stretch of authority beyond what the law and constitution of India recognized in even the Emperor, under the Mogul rule.

MR. H. COLEBROOKE, *Husbandry of Bengal* (1806).

PAGE 67 & 68.

(a). In examining this question, it was pre-supposed that a property in the soil, similar to that which is vested, of right or by fiction, in the sovereign, or in some class of his subjects, throughout every state of Europe, must vest in some class of the inhabitants of Hindustan, either sovereign or subject. If it were denied to the zemindar (a denomination which readily suggested the term of 'landholder' for its equivalent), the sovereign has been thought the only member of the State to whom that property could be attributed. Besides the presumption arising from the literal interpretation of the name, the hereditary succession of zemindars pointed out these for the real proprietors; and although the succession did not follow the rules of inheritance established by law for landed property, and admitted in practice for real estates of which the revenue had been granted away by Government; and although the hereditary succession to offices of account was as regular and as familiar as it was to zemindaries, the advocates for the rights of zemindars deemed the argument conclusive, or appealed to humanity in support of it. For, perceiving no competitor but the sovereign for the lordship of the soil, it escaped their observation that the rights of more numerous classes might be involved in the question, and that the appeal to humanity might well be retorted.

(b). These and other arguments were assisted by considerations of expediency, which decided the question; and accordingly the zemindars are now acknowledged as proprietors of the soil. Yet it has been admitted by a very high authority, that anciently the sovereign was the superior of the soil; that the zemindars were officers of revenue, justice, and police; that their office was frequently, but not necessarily, hereditary; that the cultivator of the soil, attached to his possession with the right to cultivate it, was subject to payments varying according to particular agreements and local customs; that, in general, he continued on the spot, but that the revenue to be paid by him to the State was to be determined by the zemindars;¹ that the riat certainly had a title by occupancy, in right of which he might retain the land, without reference to the will and approbation of a superior, but subject to contributions for the support of the State. To assess and collect these contributions, regulated as they were by local customs or particular agreements, but

¹ View of plans, &c.

varying at the same time with the necessities¹ of the State, was the business of the zemindar, as a permanent, if not as a hereditary officer.

7. Thus it appears that the Law and Constitution of India at the date of the permanent settlement were doubly violated in the gift of waste lands to zemindars. In the *first* place, title to waste land could only be acquired by reclaiming and cultivating it, and this the zemindars of 1793 had not done. *Secondly*, the law restricted the Emperor, and therefore it restricted the East India Company, when they "stood forth as dewan," from giving away waste land except on payment of the prescribed tax or revenue to the State. While this was the unsatisfactory title of the zemindar to the waste lands, it did not give him an absolute property in those lands; what was transferred to him was merely the State's reversionary interest in a fixed amount of revenue or rent whenever the waste lands might be brought into cultivation; those who reclaimed the waste were, by the Law and Constitution of India, regarded as making their "own," that is, *khoddkasht*, what, till then, was no man's land, and as so making it *khoddkasht* subject to payment of a rent not liable to increase beyond the *pergunnah* rate, that is, of a fixed rent. The immense waste lands in 1793 were the Poor Law Fund, and the provision, for a growth of population, and their gift to the zemindars has created one of the famine problems of the present day.

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Para. 8.

8.—OUSTING BETWEEN CULTIVATION AND HARVEST.

(1).—J. N. HALHED, *page 83*.

Palhee kashtees and casual occupants may not be ousted from their land in the interval between cultivation and harvest; thus a person laying out his land for sugarcane is entitled to hold for two years at the least, and may not be ousted.

Between cultiva-
tion and harvest.

(2).—MR. H. COLEBROOKE (*Minute, 1812*).

In respect to the more extensive power of annulling all leases when lands are sold for arrears of public revenue, and still more generally with respect to the landholder's right, however vested in him, or from whatever cause arising, of enhancing the rent payable by a ryot or occupant, I am of opinion that further provision should be made for the security of the tenant, in addition to, or amendment of, the existing rule, that *pottahs* shall not be cancelled before the close of the year, in con-

Revenue Selec-
tions, Vol. I,
page 264.

APP. XV. sequence of a sale taking place subsequently to the second month of the year.

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LANDS.

Para. 8, contd.

The principle on which the amendment I mean to propose will be founded is that of a tenant's not being liable to pay a quarter's rent more than he had reason to expect he should be subject to, when he entered on the cultivation of the land, for the crop of the current season. Whether his lease has even expired, or were on any account voidable, if he has been, nevertheless, allowed to commence the cultivation of the ground, at the expense of his money and of his labour, without notice of an enhanced rent, he cannot justly be chargeable with a higher rent than that borne by his former lease, or usually paid by him. More he could not expect would be demanded from him; and if more be exacted, it is a surprise, little short of fraud, since he has been deluded into the expenditure of capital and the employment of labour in the confidence of being only subject to the former rent; and has not had the opportunity of choosing between the relinquishment of the land and the payment of the enhanced rent required of him.

Between cultivation and harvest.

It should therefore, in my opinion, be made a universal rule, that no cultivator or tenant of land shall be liable to pay an enhanced rent, though subject to enhancement under subsisting regulations, nor any landholder, or renter, or sequestrator, have power to demand it, unless written engagements for such enhanced rent have been entered into by the parties, or formal written notices have been served on such cultivator or tenant at the season of cultivation, *viz.*, in the month of Jeth (or earlier in districts where the cultivation for the year commences at an earlier period), notifying the specific rent under the landlord's right of enhancing it, to which he will be subject for the ensuing Fuslee, or for the current Bengal year. Unless the due service of such notification be proved, no greater rent should be exigible by process of distress or confinement of person, nor recoverable by suit in court, than the cultivator or tenant was bound to pay by his previous engagements; and if more be levied from him, he should be entitled to a refund of the excess with damages, on proof of the circumstances before a court of justice.

In the rules here proposed, I have assumed the month of Jeth as a season of cultivation, that being the period at which cultivation is reckoned to commence in the districts which compute by the Fuslee era. It is, I believe, sufficiently early for the Bengal districts also; and, in that case, the indefinite clause which has been inserted may be omitted, for the very desirable purpose of certainty and precision, which will be best attained by restricting the period of notice to the single month specified.

(3).—MR. HOIT MACKENZIE (18th April 1832).

Sess. 1831-32,
Vol. XI.
Questions 2570
to 2572.

Q. Do you happen to know whether the non-occupancy ryot is generally entitled to hold by the year?—I never heard of anything under a year.

Q. Have they a right similar to that which prevails in England, that they can only be called on to quit their farm at a known period of the year?—It is generally understood that the interval between the

setting in of the last crop of one year and the ploughing for the next is the time at which it is settled. APP. XV

SUMMARY.

Para. 9.

(4).—MR. H. NEWNHAM (*7th May 1832*).

The right of the absent occupancy ryot has been admitted by all ryots; they themselves maintain that, directly the heir of an absconded ryot, or the absconded ryot himself, returns, all he has to do is to come to a compromise for the crop on the ground, and the land is restored to him immediately. *Ibid.*, Q. 2697

9. The salient points in this Appendix are—

I. That zemindars had no inherent title in waste lands; and that the gift of extensive waste lands to them in the permanent settlement was bestowed by a stretch of authority beyond that allowed by the law and constitution of India.

II. That as the State had never been entitled to more than the established pergunnah rate of rent on lands reclaimed from waste, so the State's unconstitutional gift to zemindars was limited to that rent; it did not confer a property in the land; that appertained, according to immemorial custom, to him who reclaimed the land from waste.

III. That under the law and constitution of India, the waste lands provided for an extended and long continued growth of khoddkasht proprietors of land.

IV. That the resident cultivator of waste land in his own village becomes the proprietor of it, subject to payment to the State, or now, to the zemindar, of only the pergunnah rate; that the custom under which the resident cultivator acquired this waste by bringing it into cultivation subject only to payment of the established pergunnah rate, was not interrupted by the zemindary settlement, which gave no property to the zemindar in the waste lands of a village beyond a reversionary interest in the pergunnah rate of rent on those lands whenever they might be brought into cultivation; and that the Court of Directors informed the Government of Bengal that "it is the opinion of many considerable authorities that, on the leases of waste as well as of other lands the pergunnah rates form a standard not to be exceeded." This opinion of several high authorities accords with Mahomedan law, and it is not gainsaid by any authoritative opinion to the contrary.

V. Besides the levy by zemindars of rates exceeding his pergunnah rate, on new cultivation since the permanent

APP. XV. settlement, they have benefited in Bengal by absorbing police lands, according to the extract from Mr. Halhed's memoir.

—
SUMMARY.

Para. 9, contd.

VI. According to universal custom in India at the date of the permanent settlement, which agreed with the custom in England, even a temporary cultivator could not have his rent raised over his head until after he had removed his crop from the ground, and before his sowing for the next crop.

APP. XVI. cepted part of the *Government's share*. Accordingly, in all the discussions of settlements of land revenue in Bengal, from the earliest down to the decennial settlement, we find, as the central idea, that what was due to the State by established custom constituted the gross demand on the ryot; and that exaction from him of anything beyond this, without the sanction of the Government, amounted to oppression.

WHAT CONSTITUTED OPPRESSION.

Para. 3, contd.

I.—PRESIDENT AND SELECT COMMITTEE (16th August 1769).

Colebrooke's Digest, pages 176-8.

Another grievance, which is equal to the former, is the variety of demands which the collectors, from the aumil and zemindar to the lowest pyke, impose, without any colour or license from the Government; some of which have been so long exacted and paid, that the ryots begin to imagine the oppression is sanctified by Government, and is not the mere fraud of the collectors. The multiplying of superfluous agents and inferior collectors may also be deemed a source of extortion.

II.—GOVERNOR-GENERAL IN COUNCIL (19th July 1786).

E. I. Revenue Selections, Vol. I, page 158.

(a). The simple and correct ancient revenue system of the country, by its useful checks from the accountant and assessor of the village through its several gradations upwards to the Accountant General of the Exchequer, was, we have reason to believe, no less calculated to protect the great body of the people from oppression than to secure the full and legal rights of the sovereign.

(b). * * More especially in the time of the later Nazims, and principally about the time and since our acquisition of the Dewance, the ingenuity of the native collectors, in greater measure than previously, has endeavoured to confound the limits of different districts, to vitiate accounts, to increase old *abwabs* and superadd new ones, and, in short, to involve oppression in such mystery and difficulty as nearly to defeat and set at defiance all attempts at detection.

III.—SIR JOHN SHORE (June 1789).

Fifth Report.

(a). The gross jumima of any district is properly the amount paid by the ryots, which is liable to various deductions on account of the charges incidental to the collection of the revenues in its different stages.

(b). Where these variations of demand upon the ryots take place by any established rules founded on the quality of the soil, its produce, and the uses to which the land is applied, however perplexing they may be to the collector, or other officers of Government, I do not deem them of material inconvenience to the ryots, who from usage understand them, and can tell when they are opposed to exactions (para. 220).

(c). I shall here insert a remark of the Committee appointed to conduct the investigation in 1777, which is agreeable to my own information and belief:—

“ It appears to have been an established measure in this country, that the accounts of the rents of every portion of land and other sources of

revenue should be open to the inspection of the officers of Government; APP. XVI. it was chiefly by the intimate knowledge, and the summary means of information which the Government thereby possessed, that the revenue was collected, and the zemindars were restrained from oppression and exactions. To the neglect of these ancient institutions, to the want of information in the government of the State and resources of the country, may perhaps be justly ascribed most of the evils and abuses which have crept into the revenue." (paras. 247-8).

—
WHAT CONSTI-
TUTED OPPRES-
SION.

Para. 3, contd.

(d). Where the rates of land are specific and known, a ryot has a considerable security against exaction, provided the officer of Government attends to his complaints and affords him redress; and without this he can have none. *The additional sanction which he derives from a pottah*, supposing it to be properly drawn out, is this—that it specifies, without reference to any other account, the terms upon which he holds the land, *and the amount of the abwabs or cesses*, which are not mentioned in the *nerikbundy*, nor always in the *jummabundy* (para. 401).

(e). I do not observe in the correspondence of the collector any specific rules for the security of the ryots. I well know the difficulty of making them; but some must be established. The great point required is, to determine what is and what is not oppression, that justice may be impartially administered according to fixed rules. In Behar the variations in the demands upon the ryots are not so great as in Bengal; the system of dividing the produce affords a clear and definite rule, whenever that prevails; and the regulations need not be so minute as those which I proposed for Bengal (para. 145).

(f). When the five years' settlement was concluded by the Committee of Circuit, several conditions were inserted in the agreements of the farmers and zemindars, calculated for the security of the Government and benefit of their tenants. Thus, * * they were directed to collect from the cultivated lands of the ryots in the *mofussil* the original *jumma* of the last and foregoing years, and *abwab* established in the present, and on no account to demand more; where the lands were cultivated without *pottah* by the ryots, they were to collect according to *the established rates of the pergunnah* (para. 450).

It appears from these extracts that anything beyond the rates established by long usage, and the amounts sanctioned by Government, was not demandable from the ryots, and could be levied only by oppression, or as an exaction. It further appears from (d) that the ryot's customary security was the official record of the *pergunnah* rate in the local register. The mass of the *khoodkasht* ryots depended on this security, and held without any *pottah*. The *pottah* was devised by Sir John Shore as a necessary part of his settlement, simply as an additional security which would ensure to the ryot the further advantage of recording the amount of the *abwabs* or cesses, as well as the *pergunnah* rate. The *pottah* was a mere record of the ryot's independent right; not the document from which he derived his right.

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PERMANENT
SETTLEMENT FOR
RYOT.

Para. 4.

4. The purpose or resolve of the Governments preceding that of Lord Cornwallis, to fix, permanently, the demand leviable from the ryots, is shown in the following extracts:—

I.—PRESIDENT AND SELECT COMMITTEE (*16th August 1769*).

Colebrooke's
Digest, page 178.

(a). For the ryot, being eased and secured from all burthens and demands but what are imposed by the legal authority of Government itself, and future pottahs being granted him specifying that demand, he should be taught that he is to regard the same as a sacred and inviolable pledge to him, that he is liable to no demands beyond their amount. There can, therefore, be no pretence for suits on that account—no room for inventive rapacity to practise its usual arts.

Colebrooke's
Digest, page 180.

(b). The ryot, too, should be impressed in the most forcible and convincing manner * * that our object is not the increase of rents, or the accumulation of demands, but solely, by fixing such as are legal, explaining and abolishing such as are fraudulent and unauthorised, not only to redress his present grievances, but to secure him from all further invasions of his property.

II.—GOVERNOR-GENERAL (WARREN HASTINGS)—*1st November 1776*.

E. I. Revenue
Selections, Vol.
I, page 130.

Many other points of inquiry will be also useful; to secure to the ryots the permanent and undisputed possession of their lands, and to guard them against arbitrary exactions. This is not to be done by proclamations and edicts, nor by indulgences to the zemindars and farmers. * * The foundation of the work of establishing new pottahs for the ryots must be laid by Government itself. All that I would here propose is to collect the materials for it, by obtaining copies of the present pottahs, and of the nerikbundy, or rates of land, by which they are regulated in each district, and every other information which may throw a light on this subject, and enable the Board hereafter to establish a more permanent and regular mode of taxation.

III.—MR. P. FRANCIS (*1776*).

considered that the rate of assessment per beegah should be fixed for ever upon the land, no matter who might be the occupant (Appendix IV, para. 5, section d).

Here, again, we see in I and II, that the pottah was designed as a record, and the sole record, of the rights of ryots.

5. The bare amount demandable under established custom had for two centuries been known as the *assul jumma*: to these there had been added by the State *abwabs*, or cesses, partly for alleged temporary exigencies of State, partly on account of a rise of prices. These State cesses and the *assul jumma*, together, constituted the demand which was leviable from the ryot with the sanction of Government; all else was

levied through the exaction or oppression practised by zemindars and farmers. The *assul jumma* was the fixed demand; its amount per zemindary was revised at distant intervals, so as to take in new lands brought into cultivation; but the revision was made so as not to alter the established or *pergunnah* rate of assessment per *begah*. The *abwabs*, or cesses, however, were, to some extent, not wholly referable to a rise of prices. These statements are supported by the following extracts:—

APP. XVI.
PERMANENT
SETTLEMENT FOR
THE RYOT.
Para. 5, contd.

I.—WARREN HASTINGS (*14th July 1786*).

(a). The ryots will not venture to refuse to pay the *established due to the Circar* or Government. Custom is a law whose obligation operates in their own defence, nor have they any idea of disputing it; they consider it as a species of decree from fate. But as the value of money in proportion to its plenty must have decreased in India as well as in Europe, so it has been found that the ryots of a village and of a whole district could pay a greater revenue than that originally settled by custom. Hence arose the oppressive catalogue of *abwabs*, or special additional assessments, by Government. On this head Mr. Grant has given us much useful light. The *abwabs*, or successive additional taxes, make regular heads in the accounts of every village and district; nor are the *abwabs*, established openly by Government, of that oppressive nature which Mr. Francis in his ingenious Minutes has supposed.

E. I. Revenue
Selections, Vol. I,
page 455.

(b). The sources of real oppression are in secret *abwabs*, or unavowed taxes, which the great farmer or zemindar imposes at will on the ryots, and of which we have such cruel examples in the investigation at Rungpore. Here, again, we see the great advantage of being able to examine the revenue system, and to trace back oppression to its source, according to the thread and light of established usage and ancient accounts.

(c). A *clear principle* is ascertained. It is, fortunately, the check against the oppression of the ryot or peasant, and the bulwark against corruption in the officers of Government. If, for example, an additional revenue is imposed upon the ryot, it cannot be imposed secretly; it must be by *abwab*, or additional tax, which must appear in the accounts in every village, *pergunnah*, or zemindary, and be recorded, in some shape, in various native accounts of the revenue for the year.

II.—SIR J. SHORE (*June 1789*).

(a). The *assul jumma*, under the Mogul rule, was at long intervals increased in total amount for each zemindary, so as to give the sovereign the advantages arising from extended cultivation and increased population. This increase made no alteration in the rates upon the ryots.

Fifth report,
Paras. 30-1 of
Minute.

(b). But the *abwab* *soubadary*, or viceregal imposts, which constitute the increase since 1723, had a contrary tendency, for they enhanced the rates. They were in general levied upon the standard assessment in certain proportions to its amount, and the zemindars who paid them were

Para. 33.

APP. XVI. authorised to collect them from the ryots in the same proportions to their respective quotas of rent.

PERMANENT
SETTLEMENT FOR
THE RYOT.

Para. 5, contd.

Para. 35.

Para. 64.

(c). An enhancement in the rates of taxation may be defended on the grounds of the increase of commerce and increase of specie between the time of Tury Mull and the administration of Jaffier Khan.

(d). My objections to the principle of the soubadary imposts have a reference to the circumstances under which they were established. If the rates in the tukseem of Tury Mull with respect to the ryots had not been previously augmented by impositions separate and distinct from those of the soubahs, perhaps the best possible mode of obtaining an increase would be by demanding it in certain proportions to the standard, with a due regard to the degree of improvement in the country.

(e). See, also, Appendix VII, paragraph 5, sections I and II.

6. In extracts (c) and (d) Sir John Shore considered the contingency of an enhancement of rents on account of a rise of prices, and the particular mode of enhancement by the rule of proportion. In the following extracts from his minutes, both the future enhancement of rents and the particular form of it were advisedly precluded by the demand upon the ryot being permanently limited to the amount which was to be inserted in pottahs, which the zemindars, as a part of the permanent zemindary settlement, were to grant to the ryots as a record of their rights.

I. I do not observe in the correspondence of the collectors any specific rules for the security of the ryots. I well know the difficulty of making them, but some must be established. * * I have taken the liberty to prepare, for the consideration and determination of the Board, the propositions which result from the preceding considerations in the form of resolutions.

II.—PROVISIONAL RULES FOR THE SECURITY OF THE RYOTS.

That, whereas, from the ignorance, inattention, and oppressions of zemindars, the greatest abuses have been practised in the collection, and the ryots have been exposed to exactions, the following rules are now prescribed to all zemindars, talukdars, and persons entrusted with the revenues for their immediate direction and guidance:—

(a). That the rents to be paid by the ryots, by whatever rule or custom they may be demanded, shall be specific as to their amount. If by a pottah containing the *assul* and *abwab*, the amount of both shall be inserted in it, and the ryot shall not be bound to pay anything beyond the amount specified, on account of kurcha or any other article.

(b). If by a tikka pottah, the whole amount payable by the ryot is to be inserted in it. If by any rule or custom such as the payments of the last and preceding years, the rate of the village, pergunnah, or any other place, an account is to be drawn out in the beginning of the year, showing what the ryots are to pay by such rule or rate, and a copy of it is to be given to them.

(c). Where the rents are adjusted upon a measurement of the lands after cultivation, the rates and terms of payment shall be expressed in the pottah. APP. XVI.

(d). If by any established and recorded jummaundy, that is to be the rule for demanding the rents. If the rents are paid in kind, the proportion which the ryot is to pay shall be specified in account or written agreement. PLAN OF THE
PERMANENT
SETTLEMENT.
Para. 6, contd.

(e). That no zemindar, farmer, or person acting under their authority, shall be allowed to cancel the pottahs of the khoodkasht ryots, except upon proof that they have been obtained by collusion, or that the rents paid by them within the last three years have been reduced below the rates of the nerikbundy of the pergunnah, or that they have obtained collusive deductions, or upon a general measurement of the pergunnah for the purpose of equalizing and correcting the assessment.

(f). That when the jumma of a ryot has been ascertained and settled, he shall be authorised to demand a pottah from the zemindar, or person acting under his authority, whether farmer, gomashita, or other; and any refusal to deliver the pottah shall be punished by fine proportioned to the expense and trouble of the ryot in obtaining it.

(g). That the zemindar be not authorised to impose any new *abwab* or *muthote*, on any pretence whatever, upon the ryots; and every exaction of this nature to be punished by a penalty equal to three times the amount imposed. If, at any future period, it be discovered that new *abwab* or *muthote* have been imposed, the zemindars shall be made responsible for the penalty during the whole period of such impositions.

This last clause *b* was misplaced among the Provisional Regulations, for Lord Cornwallis and Sir John Shore distinctly laid down that the levy of fresh *abwabs* by the zemindars should be prohibited.

III.—PERMANENT PLAN FOR THE EASE AND SECURITY OF THE RYOTS.

(h). That as the impositions upon the ryots, from their number and uncertainty, have become intricate to adjust, and a source of oppression to the ryots, the zemindars shall be compelled to make a revision of the same, and to simplify them by a gradual and progressive operation, as follows:—

(i). They shall begin with those pergunnahs where the impositions are most numerous, and having obtained an account of them, shall, in concert with the ryots, consolidate the whole, as far as possible, into one specific sum; but so, that in no case the sums demanded from the ryots shall exceed three articles, *viz.*, *assul*, *abwab*, and *kurcha*. Having prepared this account, they shall submit it to the collector for his inspection; after which it is to be enforced by the authority of Government, and any enhancement of the *abwab* or *kurcha* to be punished as extortion.

(j). That where, by mutual consent of the ryots and the zemindars, the *abwab* can be wholly reduced and consolidated, it be done accordingly; and the rates of the land, according to the nature of the soil and the produce, to be the rule for fixing the rent.

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PLAN OF THE
PERMANENT
SETTLEMENT.

Para. 6, contd.

(k). That the rents of each pergunnah on the zemindary be annually adjusted in the same manner, until the whole be completed; and that the exact proportion which the *abwab* and *kurcha* bears to the *assul jumma* be precisely determined. The zemindar is to be positively enjoined to regulate a certain proportion of his zemindary annually, so that the whole be completely performed within x years from the date of his agreement.

7. The foregoing seven provisional and three permanent rules occur in the draft Propositions for Bengal appended to Sir John Shore's minute dated 18th June 1789. He had urged a provisional or experimental term (ten years) for the new settlement before declaring it permanent. The provisional regulations would have been carried out in that experimental period. The provisional rules, it will be observed, distinctly provided that the pottahs which were to fix future rents were to be issued to all classes of ryots, including those under temporary leases. The permanent rules provide for all ryots without distinction. Illustrating the permanent by the temporary rules, the intention of permanently fixing in the pottahs the rents of all classes of ryots was manifest.

8. In the proposed Resolutions for Behar, appended to the first of Sir John Shore's two minutes of 18th September 1789, only the first four of the provisional rules detailed in the preceding extract (*viz.*, para. 6, II, *a* to *d.*) are included, Sir John Shore having in his later minute of 18th September insisted more strenuously than in the first minute of 18th June on the experimental limitation of the settlement to ten years, and having relied on the consideration that "in Behar, the variations in the demands upon the ryots are not so great as in Bengal; the system of dividing the produce affording a clear and definite rule, whenever that prevails, and the regulations need not be so minute as those which I proposed for Bengal."

9. I. In a minute dated 8th December 1789 Sir John Shore, previous to his departure for Europe, recorded, among others, the following "doubts regarding the propriety of declaring the assessment now to be imposed upon the country, fixed and unalterable":—

10.

(a). It is allowed that the zemindars are, generally speaking, grossly ignorant of their true interests, and of all that relates to their estates; that the detail of business with their tenants is irregular and confused, exhibiting an intricate scene of collusion opposed to exaction, and of unlicensed demand substituted for methodised claims; that the rules by which the rents are demanded from the ryots are numerous, arbitrary,

and indefinite; that the officers of Government possessing local control APP are imperfectly acquainted with them, whilst their superiors, further removed from the detail, have still less information; that the rights PLAN of the talukdars, dependent on the zemindars, as well as of the ryots, PRIN are imperfectly understood and defined; that in common cases we SUTTL often want sufficient data and experience to enable us to decide, with justice and policy, upon claims to exemption from taxes; and that a decision erroneously made may be followed by one or other of these consequences—a diminution of the revenues of Government, or a confirmation of oppressive exaction. Para.

(b). To the truth of this detail there will be no dissenting voice; and Para. it follows from it that, until the variable rules adopted in adjusting the rent of the ryots are simplified and rendered more definite, no solid improvement can be expected from their labours, upon which the prosperity of the country depends. * *

(c). No one, I believe, is so sanguine as to expect that the perpetuation of the zemindary assessment will at once provide a remedy for these evils. * * We know from experience what the zemindars are. * * The necessity of some interposition between the zemindars and their tenants is absolute; and Government interferes by establishing regulations for the conduct of the zemindars, which they are to execute, and by delegating authority to the collectors to enforce their execution. If the assessment of the zemindaries were unalterably fixed, and the proprietors were left to make their own arrangements with the ryots, without any restrictions, injunctions, or limitations—which, indeed, is a result of the fundamental principle—the present confusion would never be adjusted.

(d). This interference, though so much modified, is in fact an invasion of proprietary right, and an assumption of the character of landlord, which belongs to the zemindar; for it is equally a contradiction in terms to say that the property in the soil is vested in the zemindar, and that we have a right to regulate the terms by which he is to let his lands to the ryots, as it is to connect that avowal with discretionary and arbitrary claims. If the land is the zemindar's, it will only be partially his property, whilst we prescribe the quantity which he is to collect, or the mode by which the adjustment of it is to take place between the parties concerned.

Consistently with Sir John Shore's proposals for fixing the rent of the ryots, and recording the amount of the rent in a pottah, and with his arguments in the other preceding extracts, which support those proposals, the drift of the hazy argument in this extract seems to be that, to avoid the appearance of Government interfering with the zemindar's right by "regulating the terms by which he is to let his lands to the ryots," that is, by fixing the ryot's rent and recording his right, though "the necessity of some interposition between the zemindars and their tenants is absolute," an experimental term should be allowed for the initial stage of the settlement, during which the rent to be fixed for the ryot and to be included in his pottah would be settled by mutual agreement

APP. XVI. between the zemindar and ryot. The opportunity of seeing whether this would be done, was the main advantage to Government for which Sir John Shore contended in advocating an experimental introduction, at the outset, of the decennial settlement.

PLAN OF THE
PERMANENT
SETTLEMENT.

Para. 9, contd.

Para 18.

(e). Notwithstanding repeated prohibitions against the introduction of new taxes, we still find that many have been established of late years. The idea of the imposition of taxes by a landlord upon his tenant is an inconsistency, and the prohibition in spirit is an encroachment upon proprietary right; for it is saying to the landlord, you shall not raise the rents of your estate. But, without expatiating on this¹ part of the argument, I shall only here observe that, with an exception of an arbitrary limitation in favour of the khodkasht ryots, the regulations for the new settlement virtually confirm² all these taxes, without our possessing any records of them, and without knowing how far they are burthensome or otherwise. In some cases, a knowledge of those impositions has been followed by the abolition of them; in others it may be equally necessary; wherever it takes place, there is a risk that the assessment will suffer diminution. At present they are in many places so numerous and complicated that, after having obtained an enumeration of the whole, the amount of the *assul* with the proportionate rates of the several *abwabs*, it requires an accountant of some ability to calculate what a ryot is to pay; and the calculation may be presumed beyond the ability of most tenants. The pottah rarely expresses the sum-total of the rents, and it is difficult to determine what is extortion. * *

Paras. 18 & 19.

(f). Amid this confusion, the necessity of prescribing regulations for simplifying the complicated rentals of the ryots (which ought, if possible, to be reduced to one sum for a given quantity of land of a determinate quality and produce), of *defining and establishing the rights of the ryots with precision*, together with the expediency of procuring clear data for the transfer by sale of public and private property, are admitted.

Para. 20.

(g). Under all these circumstances, is it not better to introduce a new principle by degrees, than establish it at once beyond the power of revocation? If we are convinced that any meditated arrangements are sufficient to correct present and future abuses, or that we can in the sequel establish regulations for this purpose without affording pleas that shall affect the permanency of the assessment; if the relative rights of the individuals concerned are not sufficiently determined, or can be determined, without the same consequence from any future decisions; if we are sufficiently informed, with respect to the present exactions, to declare that they may be continued, without establishing a rack-rent, or, if they are abolished, that the suppression of them will not diminish the assessment, no objections will remain to declare it permanent and unalterable. But upon these points I have my doubts, and they are justified by past experience. * * Those who contend for the permanency of the assessment, must maintain the affirmative of all the dubious propositions which I have stated.

¹ This blowing of hot and cold.

² That is, establish a permanent settlement for the ryot, though it be an oppressive one.

(h). I consider this as a period of experiment and improvement, during which, by a systematical conduct, regularly directed to one object, we are to give confidence to the zemindars, and procure a simplification of the present complicated rental of the ryots. The foundation of this improvement is to be laid in regulations to be established, and the proposed reform depends upon the execution of them, without which, I may venture to predict, no assessment can be permanent.¹ * * If, instead of presumptions arising from the supposed collections of the zemindars, we knew what the ryots paid, and whether that amount was burthensome or otherwise; and if the assessments of the land tax were regulated by a general standard, the arguments founded on equality would lose much of their weight; * * I hold it prudent in establishing great innovations in principle, under an acknowledgment of defective information, to take experience for our guide. Our measures have a view to permanency; but before we declare it, prudence dictates that we should have some certainty that the Government will not suffer by its liberality, and that the benefits of it will extend to that class (ryots) whose labours are the riches of the State.

APP.
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PLAN 'O
PERMAN
SETTLEM
Para. 9,

Para. 26.

These extracts (e) to (h) make it clear, as stated in the remarks on (a) to (d), that, owing to the difficulty of Government officers settling what, on the basis of existing rents and *abwabs*, were to be entered in the pottahs as the *established* rents, for the future, under the permanent settlement, the zemindars and ryots were to come to an agreement about the amounts which should be so entered in the pottahs. This done, the rates to be thus entered in the pottahs would be the permanent rates for the ryots, in like manner as the amounts entered in the zemindars' agreements with Government became the only revenue payable for ever to the Government, under that settlement.

II. Lord Cornwallis replied to Sir John Shore in a minute dated 3rd February 1790. His reply to those remarks of Sir John Shore which asserted the necessity of fully securing and establishing the rights of the ryots was as follows:—

(a). To the representations of Sir John Shore which are quoted in (a) and (c) of section I, Lord Cornwallis replied in passages which are set forth in Appendix IV, para. 7, section II.

(b). Mr. Shore observes that we have experience of what the zemindars are; but the experience of what they are or have been, is by no means the proper criterion to determine what they would be under the influence of another, founded upon very different principles. We have no experience of what the zemindars would be under the system which I recommend to be adopted.

¹ In 1788-79 enhancement of rent remains as great a difficulty as though there had not been any permanent settlement in 1789-93.

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PERMANENT
SETTLEMENT.

Para. 9, contd.

Lord Cornwallis soon realized "what the zemindars would be." The decennial settlement was promulgated in 1789 and 1790; and his Lordship, in a minute dated 7th December 1792, recorded that—

"some of the principal zemindars in Bengal (the zemindars of Burdwan, Nuddea, and others), though allowed considerable abatements from their jumma for the maintenance of thannadars and pykes, either keep up no police establishments whatever, or sell the appointments in the police to the most notorious robbers and murderers, who plunder the country which it was their duty to protect. The same abuses prevail, in a greater or less degree, in every zemindary the proprietor of which is allowed to keep up a similar establishment."

Yet, without the slightest consciousness how these appalling evidences of the wolfish disposition of the zemindars of that day destroyed grounds of childish expectations, that miscreant zemindars, suffused with gratitude for the decennial settlement, would give pottahs to ryots at the customary rates, Lord Cornwallis, on 22nd March 1793, issued, without compunction or remorse, his proclamation of a permanent zemindary settlement. In his minute of 3rd February 1790 Lord Cornwallis continued:—

(c). With regard to the ignorance and incapacity of zemindars * * I must here observe, however, that the charge of incapacity can be applied only to the proprietors of the larger zemindaries. The proprietors of the smaller zemindaries and taluks in general conduct their own business, and, I make no doubt, would improve their lands were they exempted from the authority of the zemindars, and allowed to pay their revenue immediately to the public treasuries of the collectors.

But on 7th December 1792 Lord Cornwallis wrote: "In some parts of the country, particularly in the eastern and southern districts of Bengal, many of the petty landholders, encouraged by the great distance of the magistrate's place of residence, and by there being no officers stationed on the spot, on the part of Government, for the protection of the country, have, from time immemorial, been in the habit of perpetrating robberies themselves, or conniving at them in others. It is, indeed, notorious that most of the principal gangs of robbers are in league with some of the zemindars, and generally with those in whose districts they leave their families and deposit their plunder." But his Lordship's benevolent proclamation of 22nd March 1793, which placed millions of cultivating proprietors at the mercy of these zemindars, was issued notwithstanding.

III. The hazy arguments of Sir John Shore in the passages (d) and (e) of section I, elicited from Lord Cornwallis the reply set forth in Appendix VII, paragraph 2, section I, and paragraph 5, section III. In the same breath his Lordship denied the right of zemindars to enhance the ryot's rent beyond the amount at which it might be fixed, as a part of the permanent settlement, by Government, or under an arrangement (about pottahs) to be brought about by Government; and asserted that pottahs to be granted by wolfish zemindars were necessary to secure perpetual fixed rents for ryots; thus admitting that the permanent settlement could not be introduced without, at the same time, effectually establishing and securing the ryots' rights.

(a). With regard to the rates at which landed property transferred by public sale, in liquidation of arrears, and, it may be added, by private sale or gift, are to be assessed, I conceive that the new proprietor has a right to collect no more than what his predecessor was legally entitled to; for the act of transfer certainly gives no sanction to illegal impositions. I trust, however, that the due enforcement of the regulations for obliging the zemindars to grant pottahs to their ryots, as proposed by Mr. Shore, will soon remove this objection to a permanent settlement. For, whoever becomes a proprietor of land after these pottahs have been issued, will succeed to the tenure, under the condition and with the knowledge that *these pottahs are to be the rules by which the rents are to be collected from the ryots.*

(b). By granting perpetual leases of the lands at a fixed assessment, we shall render our subjects the happiest people in India; and we shall have reason to rejoice at the increase of their wealth and prosperity, as it will infallibly add to the strength and resources of the State.

Thus, Lord Cornwallis indicated, as distinctly as Sir John Shore, that the pottah to be issued in 1790 was to be the rule for collecting rents from the ryots, and that the rule was to be obligatory, not only on the zemindars of that day, but upon their successors;—"whoever becomes a proprietor after these pottahs have been issued" must be bound by them;—in other words, the rent specified in the pottah was to be the permanent rent; for the regulations did not provide for the alteration of the pottah in any case, except by *mutual consent* of ryot and zemindar, or with the view of conforming the pottah rate to the ancient established rate of the pergunnah.

IV. The only effective parts of Lord Cornwallis' reply were those which confirmed Sir John Shore's argument, that proper security should be provided for permanently fixing the zemindar's demand upon the ryots. His Lord-

APP. XVI. ship's remaining reasons for precipitating a zemindary settlement without providing this essential security, merely display the optimism of a weak benevolence; but, from 1790 to this day, the one who delivers the last word has been regarded as the incarnation of wisdom, and so his Lordship's views prevailed against even the appalling warnings from his own murderous and dacoitee zemindars.

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Para. 9, contd.

Report of Select
Committee, 1810.

V.—COURT OF DIRECTORS (REPLYING TO BENGAL GOVERNMENT'S REPORT
OF PROCEEDINGS WHICH ESTABLISHED THE DECENNIAL SETTLEM
—19th September 1792. ENT)

App. 12 A.

Para. 4.

(a). Your enquiries were rightly directed to the past history and present state of the districts;—their changes; new impositions and peculiar customs; the ancient rights of the different orders of landholders and tenants; * * and the regulations which should be adopted for removing defects, and securing, especially to the inferior occupants and immediate cultivators of the soil, the enjoyment of their property, subject only to moderate and known demands from the principal landholders.

Para. 35.

(b). The difference of opinion which has subsisted, we find not to relate so much to general principles as to the application of them. That the tax which the subject¹ is to pay to the State should not be arbitrary, but ascertained and fixed; that all besides which his industry can produce to him should, as far as possible, be secured to him; and that, in order to the prosperity of a country, property should be rendered definite and certain.

(c). It would be doing Mr. Shore injustice not to acknowledge that as his opinions in general against precipitating a permanent zemindary settlement are advanced with ability, so there are several of his objections which are very serious in themselves, and have considerably impressed our minds. These are drawn from the still imperfect knowledge of our Government respecting the real resources of the different divisions of the provinces, as well as of the respective rights of zemindars, talukdars, and ryots; from its inability to discriminate what parts of the taxes actually levied from the two classes by the zemindars ought² to be sanctioned by Government in a permanent settlement; from the uncertainty of accomplishing that settlement with a due regard to the rules prescribed for it; and especially from the extreme difficulty of forming and executing such regulations *as shall secure to the great body of the ryots the same equity and certainty as to the amount of their rents, and the same undisturbed enjoyment of the fruits of their industry, which we mean to give to the zemindars themselves.*

¹ The subject who pays the tax out of which the Government and zemindar's shares are provided is the ryot. The subject whose industry grows the produce out of which the tax is paid is the ryot.

² This was a clear intimation that the ryot's assessment at the date of the permanent settlement would become permanent, under that settlement, excepting any illegal cesses which might be expressly disallowed.

As matters have turned out in the nearly ninety years since the Court wrote their beautiful sentiments, the ryots have done everything, the zemindars nothing, for the improvement and extension of agriculture; and, without having put forth any of their own industry, the zemindars are enjoying, and the ryots, in many parts of Bengal, are denied, the fruits of the ryots' industry; and the great body of the ryots are left in uncertainty as to the amount of those rents which were to have been made certain in 1793.

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Para. 9, contd.

(f). Upon these grounds it is contended that, as some districts of the country will probably be over-rated, and others suffer from droughts and inundations, the proprietors unable to make good their assessments will, without anything blamable on their part, be deprived of their lands by judicial sale; that the Company will from such causes as these be exposed to a continual diminution of the stipulated revenue, without a possibility of any augmentation to balance their losses.

Para. 36.

(e). And that, after all, unless we succeed in introducing and establishing equitable regulations between the landholders and their tenants, the great objects for which such sacrifices and a permanent settlement will have been made, that is, the improvement and happiness of the country, will be unattained, and, therefore, the evils of the old system will subsist.

Para. 35.

(f). From all these considerations, and others of inferior weight urged by Mr. Shore, he infers that we should attempt to advance to a perpetual settlement only by gradual measures; that the first decennial period should, therefore, be regarded as a period of experiment and improvement, wherein the knowledge of our Government as to the state and resources of the country, and the relative rights of the different orders of the people, is to be improved;—wherein confidence is to be given to them; the mode of collecting and fixing the rents from the ryots to be simplified; due regulations of every kind established and enforced; the people by degrees formed to the new system of certainty and security, &c., &c.

(g). No consequences more formidable could be presented to us from the proposed system than a diminution in perpetuity of the Company's revenue, with the still continued subsistence of all or any of those disorders in the mode of imposing and levying it from the great body of the people which have already done such essential injury to the country, and must ever prove a bar to its prosperity.

Para. 33.

(h). Very clear and solid arguments were requisite to dispel the diffidence which this view of the subject, from such an authority, had a tendency to create, and to encourage us to persevere in our original idea of giving a fixed constitution to the finance and land tenure of the country. But this satisfaction Lord Cornwallis has afforded us in his minutes of the 18th September 1789 and 3rd February 1790, which we sincerely regard as two very valuable records, written with enlarged and just views upon the soundest principles of policy, with perfect fairness, great acquaintance with the subject, and the most conclusive reasoning in favour of a permanent assessment.

Para. 39.

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PERMANENT
SETTLEMENT.

Para. 9, contd.

(i). As to the formidable consequence of a decrease in perpetuity of the Company's revenue, the Court were pleased to find that they would escape this danger, whatever might befall the ryots (*l* below). They observed:—

Para. 10.

We find it convincingly urged that a permanent assessment, upon the scale of the present ability of the country, must contain in its nature a *productive principle*; that the possession of property, and the sure enjoyment of the benefits derivable from it, will awaken and stimulate industry, promote agriculture, extend improvement, establish credit, and augment the general wealth and prosperity. Hence arises the best security that no permanent diminution can be expected to take place, at least to any considerable amount.

(*h*). As to the great acquaintance with the subject manifested in Lord Cornwallis' minutes, the Court observed:—

Para. 12.

To another class of objections formed upon our still defective knowledge of the resources of the country, the rates, and the amount of the collections actually made on it by the zemindars and farmers, Lord Cornwallis opposes the long series of time and investigations already past; the labors of the collectors for three successive years in his administration; the communication of all the knowledge they could obtain; their superior fitness for carrying into execution that system with a view to which they had been so long employed; the improbability of succeeding better with other collectors and fresh reports,—from all which his Lordship infers that there remained only the alternative of sitting down passive and despondent under the supposed existing difficulties and disorders, or of acting upon the information already acquired:

Admitting, as we do, the imperfect knowledge of our servants in the details of the revenue, and lamenting it, not without some mixture of mortification, on considering the long course of opportunities which our possession of the country has afforded, we must nevertheless concur with Lord Cornwallis in thinking that it would be too sanguine to expect any future general improvement in this respect.

a. 43.

(*l*). As to the formidable consequence of leaving the rights of the ryots in uncertainty and insecurity, the Court had not much faith in pottahs to be given to ryots by grateful, rapacious zemindars, but, reciprocating Lord Cornwallis' opinion, they thought that zemindars who had appointed robbers and murderers to offices in the police, and who harboured dacoits, would become as lambs, if Government, by permanently limiting its demand upon them, and not providing for the security of the ryots, would hold up the "unearned increment" to the zemindars as a constant temptation to wrong-doing. Thus:—

(1). With respect to the objections drawn from the disorder and confusion in the collections, the uncertainty of their amount, the variable

indefinite rules by which they are levied, the exactions and collusions ^{Al} thence too prevalent, the intricacies in the details of the revenue business, and the ignorance and incapacity of the zemindars, Lord Cornwallis ^{PLA} charges these evils, so far as they exist (and we think with great justice), ^{PER} upon the old system, as a system defective in its principle, and carrying ^{Pa} through all the gradations¹ of the people, with multiplied ill effects, ^{Par} that character of uncertain arbitrary imposition which originated at the head. He therefore very properly contends that reform must begin² there, and that, in order to simplify and regulate the demands of the landholders upon their tenants, the first step is to fix the demand of Government itself.

(2). The greatest obstacles to the execution of the new system being, ^{Par} as already noticed, the difficulties of establishing an equitable adjustment and collection of rents between the zemindars and the ryots, we are happy to see that Lord Cornwallis is of opinion that the propositions which Mr. Shore himself has made for this end, recommending written specific agreements in all cases, would, if duly followed, be effectual. On this important branch of the subject we do not feel ourselves sufficiently in possession of all the necessary details to form a final and positive determination.

(3). No conviction is stronger in our minds than that * * of all the generated evils of unsettled principles of administration, none has been more baneful than frequent variations in the assessment. It has reduced everything to temporary expedient and destroyed all enlarged views of improvement. Impolitic as such a principle must be at all times, it is particularly so with respect to a dependent country, paying a large annual tribute, and deprived of many of its ancient supports. Such a country requires especially the aid of a productive principle of management. * * Long leases, with a view to the gradual establishment of a permanent system, though recommended upon the ground of safety, we must think, would still continue in a certain degree the evils of the former practice; periodical corrections in the assessment would be, in effect, of the nature of a general increase, and would destroy the hope of a permanent system, with the confidence of exertion it is calculated to inspire.

In this passage the Court of Directors simply amplified an argument of Lord Cornwallis. What would they and he now say to the results of their permanent settlement which, in the present day, has issued in short leases of three or five years, so as to afford frequent opportunities to landlords or middlemen for raising the ryots' rents? The permanent settlement, which was to have given to the cultivator the security of a perpetual lease, has subjected him to the tyranny of short leases, which are incompatible with agricultural improvement and with the prosperity of the cultivating classes.

¹ Thus the Court contemplated fixity of demand through all gradations down to the ryot; but they stopped at the zemindars.

² But it also ended there; and his Lordship took no thought of preventing that termination of his reform.

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Para. 9, contd.

(4). But as so great a change in habits and situation (*viz.*, to the state of things in which the zemindars will see that their own interests are permanently connected with the security and comfort of the cultivators of the soil) can only be gradual, the interference of Government may for a considerable period be necessary to prevent the landholders from making use of their own permanent possession for the purposes of exaction and oppression. [Here follows a passage which is set forth in Appendix IV, para. 10, section II] * *

(5). There remains but one subject to mention in this letter—that, however, is a subject of the last importance; it is the watching over, rearing, and maturing of this system; maintaining, under future administrations, the energy which has commenced it. All the benefits hoped for from it to the country and the Company, all its success, must depend upon this vigilance and fostering care of our Government and our servants. No mistake could be more fatal than that of supposing that it can be left to its own execution, and that all the effects it is fitted to produce will necessarily, and of course, flow from it. If any conclusion is to be drawn from the descriptions given of the people, it is surely this—that the powerful are oppressive, and the weak fraudulent: having neither wisdom nor confidence to act for distant good, and being unrestrained by moral considerations, they are prone to avail themselves of present opportunity. It is true that the new system reckons upon their self-interest—and this is an excellence in it; but it will take time to assure them that the system is solid, and to discover to them that their interest¹ is best promoted by following the dictates of justice and humanity. * * It must be the duty of our servants to watch incessantly over the progress of the new institution; to see that the landholders observe punctually their agreements with Government and with the ryots; that they neither pass invented claims on the eve of a permanent settlement, nor fraudulently shift the burthen of revenue by collusive transfers, nor by any other sinister practices diminish the payment of their stipulated assessments; that they, likewise, uniformly give to the ryots written specific agreements, as also receipts for all payments, and that those agreements be on the one side and the other fairly fulfilled. In this way, and in this only, can the system be expected to flourish.

(6). It is a truth of great importance that the *neglect* of instituted regulations has, more than the imperfections of former plans, been noxious to our affairs. We now establish the best system, and hence the most fitted for execution, but for which constant attention is requisite; and we wish, therefore, that all our servants may be constantly awake to this truth, and consider their own immediate interests and honour, as well as those of the Company and the nation, involved in the prosperity of the system of permanent taxation, and in the strenuous support and enforcement, according to their respective situations, of all the regulations framed for its success.

(*m*). With this glowing language, the Court of Directors confirmed the declaration of a permanent zemindary settlement, in full knowledge that its success depended on the good faith with which the zemindars of 1790, who were notorious

¹ The interest of harbourers of dacoits and murderers.

as oppressors, extortioners, harbourers of dacoits and murderers, and participators in the gains of these miscreants, would grant pottahs to ryots fixing for ever the amount of rent payable by the latter. Practically, the honour of the nation was confided to the keeping of those worthless zemindars of 1790, and the rights of the ryots passed away *sub silentio*.

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OF 1793.
Para. 11.

10. The provisional and permanent plans proposed by Sir John Shore for securing the established rights of the ryots are detailed in para. 6, sections II & III. In promulgating the regulations, a portion of the provisional part was omitted, in accordance with the decision to declare that the decennial settlement would be made permanent; the rules corresponding to those proposed by John Shore, which were embodied in the regulations of the decennial settlement, as finally established in Regulation VIII of 1793, were as follows:—

(a). LIV.—The impositions upon the ryots under the denominations of *abwab*, *mahtoot*, and other appellations, from their number and uncertainty, having become intricate to adjust, and a source of oppression to the ryots, all proprietors of land and dependent talukdars shall revise the same in concert with the ryots, and consolidate the whole with the *assul* in one specific sum.

See Permanent
Rules in para. 6,
section III.

In large zemindaries or estates the proprietors are to commence this simplification of the rents of their ryots in the pergunnahs where the impositions are most numerous, and to proceed in it gradually till completed, but so that it be effected for the whole of their lands by the end of the Bengal year 1198 in Bengal districts, and of the Fusli and Willaity year 1198 in the Behar and Orissa districts, these being the periods fixed for the delivery of pottahs, as hereafter specified.

(b). LV.—No actual proprietor of land or dependent talukdar, or farmer of land of whatever description, shall impose any new *abwab* or *mahtoot* upon the ryots, under any pretence whatever. Every exaction of this nature shall be punished by a penalty equal to three times the amount imposed; and if, at any future period, it be discovered that new *abwab* or *mahtoot* have been imposed, the person imposing the same shall be liable to this penalty for the entire period of such impositions.

11. Here we see that the rate of rent being once fixed and entered in a pottah, *abwabs* levied at any future period would be illegal, and the zemindars would have to refund them with full retrospective effect. This was a clear intimation that the rent to be entered in the pottah was to be a permanent rent. It should also be noticed that the period fixed for the completion of the delivery of pottahs by zemindars to ryots was the end of the Bengalee year 1198, *i. e.*, christian year 1792, or before the proclamation of the permanent settle-

APP. XVI. ment. In other words, it was a part of the new zemindary
 REGULATIONS settlement, with its bestowal of, till then, unheard of pri-
 OF 1793. vileges on zemindars that the rent payable by ryots should,
 Para. II, contd. before the proclamation of the permanent settlement have
 been recorded in pottahs, without power to zemindars to
 increase the rent thereafter, under any regulation then con-
 templated.

12. The provisional rules proposed by Sir John Shore, (para. 6, section II) related to the delivery of pottahs, which work, as we have seen, was to have been completed by 1792. Sir John Shore quitted India in 1789, and the draughtsman of the decennial regulations, afterwards made permanent, embodied his provisional rules among the permanent without distinguishing those which were strictly temporary, and which were to have terminated in 1792, thus causing much of the obscurity in the Regulations of 1793.

(a). LVI.—

(1). (It is expected that, *in time*, the proprietors of land, dependent talukdars, and farmers of land, and the ryots, will find it for their mutual advantage to enter into agreements, in every instance, for a specific sum for a certain quantity of land, leaving it to the option of the latter to cultivate whatever species of produce may appear to them likely to yield the larger profit.)

(2). Where, however, it is the established custom to vary the pottah for lands according to the articles produced thereon, and while the actual proprietors of land, dependent talukdars, or farmers of land, and the ryots, in such places shall prefer an adherence to this custom, the engagements entered into between them are to specify the quantity of land, species of produce, rate of rent, and amount thereof, with the term of the lease, and a stipulation that, in the event of the species of produce being changed, a new engagement shall be executed for the remaining term of the first lease, or for a longer period, if agreed on; and in the event of any new species being cultivated, a new engagement, with the like specification and clause, is to be executed accordingly.

The proper order of the first and second clauses of this extract is perhaps inverted; the immediate agreement was to be for the rate of rent payable for land which has a rotation of crops: *viz.*, a rate of rent varying with the kind of produce. The authors of the permanent settlement indulged a hope that, *in time*, ryots and zemindars might be found to agree for an average rate of established rents, irrespective of the kind of crop.

(b). LVII.—

(1). *First*.—The rents to be paid by the ryots, by whatever rule or custom they may be regulated, shall be specifically stated in the pottah, which, in every possible case, shall contain the exact sum to be paid by them.

(2). *Second*.—In cases where the rate only can be specified, such as where the rents are adjusted upon a measurement of the lands after cultivation or on a survey of the crop, or where they are made payable in kind, the rate and terms of payment and proportion of the crop to be delivered, with every condition, shall be specified.

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—
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OF 1793.
—
Para. 13.

(c). LX—

(1). *First*.—All leases to under-farmers and ryots, made previous to the conclusion of the settlement, and not contrary to any regulation, are to remain in force until the period of their expiration, unless proved to have been obtained by collusion, or from persons not authorised to grant them.

(2). *Second*.—No actual proprietor of land or farmer, or persons acting under their authority, shall cancel the pottahs of the khoodkasht ryots, except upon proof that they have been obtained by collusion; or that the rents paid by them within the last three years have been reduced below the rate of the nirkbundy of the pergunnah; or that they have obtained collusive deductions; or upon a general measurement of the pergunnah for the purpose of equalising and correcting the assessment. The rule contained in this clause is not to be considered applicable to Behar.

The foregoing were included by Sir John Shore among his Provisional Rules, that is to say, they were to be superseded by the delivery of pottahs prepared in accordance with those rules, and the pottahs once delivered were to determine, thereafter, the amount of rent recoverable from the ryot, without power to the zemindar of ever revising the amount in the pottah, without the ryot's consent, that is, without power to the zemindar of raising the ryot's rent as inserted in the pottah. It is further noticeable that the expression *khoodkasht-kudeemee* ryot is not used in section LX, the word used is simply "khoodkasht."

13. The Regulation VIII of 1793 was dated 1st May; on the same date were issued other Regulations, which contain the following provisions respecting rates of rent:—

(a).—REGULATION XIV, 1793 (*1st May*).

The ameen, deputed by a collector to collect the rents and revenues from the estate or farm of a defaulter, is to collect according to the engagements that may subsist between the defaulter and his dependent talukdars, under-farmers, and ryots, and shall not make any alterations whatever in such engagements, or exact more than the amount specified in them, whether they be conformable to Regulation XLIV, 1793, or not. *In cases in which no engagements may exist between the defaulter and his dependent talukdars or ryots, the ameen is to collect from them according to the established rates and usages of the pergunnah.*

APP. XVI. (b).—REGULATION XXVI, 1793 (*1st May*).REGULATIONS
OF 1793.

Para. 13, contd.

(1). By the original rules for the decennial settlement of the three provinces, minors were declared disqualified for the management of their estates; and, according to the rules for the establishment and guidance of the court of wards passed on the 15th July, 1791, and re-enacted with modifications by Regulation X, 1793, the minority of proprietors of land is limited to the expiration of the fifteenth year. In fixing this period, Government were guided solely by legal considerations, the Mahomedan and Hindu laws, although they present no specific age for the termination of minority, indirectly pointing out the fifteenth year as the time when persons are to be considered competent to the management of their affairs.

(2). Instances, however, have recently occurred, that evince the inexpediency of vesting proprietors with the charge of their lands at this early period. * * At this early age, the proprietors must necessarily be unacquainted with the laws and regulations which they are bound to observe in the management of their estates. * *

(3). But the pernicious consequences resulting from the incapacity of the proprietors are not confined to themselves. The cultivators of the soil, and the various orders of people residing upon their lands, suffer equally by the rapacity and mismanagement of their agents; the payment of the public revenue is withheld, and the improvement of the country retarded.

It appears from paragraph 3 that the levy of more than the authorised or customary rate of rent constituted rapacity in a zemindar.

(c).—REGULATION XLIV, 1793 (*1st May*).

„ XIX, „ „

(1). Both these Regulations affirmed that the zemindar has only a part of the Government's share of the produce of land, as determined by ancient and established usages of the country; see Appendix XV, para. 5, section III. Regulation XLIV of 1793 added (para. 42, III, of this Appendix) that zemindars, to raise money or from other motives, often let lands at low rents. To check this practice without interfering with the letting of waste lands at temporary low rents, the regulation enacted as follows:—

It is, at the same time, essential that proprietors of land should have a discretionary power to fix the revenue payable by their dependent talukdars, and to grant leases or fix the rents of their lands for a term sufficient to induce their dependent talukdars, under-farmers, and ryots, to extend and improve the cultivation of their land:—upon the above grounds, &c. &c.; it is enacted as follows: * *

(2). No zemindars, independent talukdars, or other actual proprietors of land, nor any persons on their behalf, * * shall let any lands in farm, nor grant pottahs to ryots or other persons for the cultivation of lands,

¹ This, and the deviation from Hindu and Mahomedan law which this reason justifies, discredit the status of a zemindar as other than an official proprietor.

for a term exceeding ten years. Nor shall it be lawful for any zemindar, &c., who may have granted pottahs for the cultivation of lands for a term not exceeding ten years, to renew such engagement, lease, or pottah, at any period before the expiration of it, excepting in the last year, at any time during which it shall be lawful for the parties to renew such engagement. (Eleven months later, or in Regulation IV of 27th March 1794, it was enacted that the landlord, in granting the renewal, should not exact any rate higher than the established rates of the pergunnah; see *post*, section *d*, 3).

(3). Whenever the whole or a portion of the lands of any zemindar, independent talukdar, or other proprietor of land, shall be disposed of at a public sale for the discharge of arrears of the public assessment, all engagements which such proprietors shall have contracted with dependent talukdars whose taluks may be situated in the lands sold, as also all leases to under-farmers, and pottahs to ryots for the cultivation of the whole or any part of such lands (with the exception of the engagements, pottahs, and leases specified in sections VII,—privileged dependent talukdars,—and VIII,—ground for dwelling-houses, &c.) shall stand cancelled from the day of sale, and the purchaser or purchasers of the lands shall be at liberty to collect from such dependent talukdars, and from the ryots or cultivators of the lands let in farm, and the lands not farmed, whatever the former proprietor *would have been entitled to demand, according to the established usages and rates of the pergunnah or district in which such lands may be situated, had the engagements so cancelled never existed.*

(4.) By the law of 1793 the land, or the mass of the ryots, paid the pergunnah rate;—the practice against which Regulation XLIV of 1793 was directed, was the letting of land at less than the pergunnah rate, except for the purpose of reclaiming it from waste. The ten years' lease at reduced rates was permitted by the new law expressly to enable zemindars to hold out sufficient inducement to dependent talookdars and ryots "to extend and improve the cultivation of land." This was the sole purpose of the limitation:—but for this purpose, the new law would have simply declared null and void the letting of land at less than the pergunnah rate; yet the law has been twisted to the prejudice of the occupancy ryot's title.

(5.) According to the passage in italics in clause 3 of the extract, the auction purchaser of the defaulter's estate was entitled to cancel (with certain exceptions) all privileged rates of rent, that is, rates below the established pergunnah rates; but he was debarred from taking from cultivators of any class more than the amount demandable according to the established local usages and local rates. Hence, the discretionary power mentioned in clause 1 of the extract was discretionary, merely, as to the term or period (not more

APP. XVI. than ten years) for which a zemindar might grant a lease to a ryot at less than the pergunnah rate, and not as to raising the rate of rent at pleasure,—that being limited by established custom.

REGULATIONS
OF 1793.

Para. 13, contd.

(d).—(1). REGULATION VIII, 1793, SECTION LIX.

A ryot, when his rent has been ascertained and settled, may demand a pottah from the actual proprietor of land, dependent talukdar, or farmer, of whom he holds his lands, or from the person acting for him; and any refusal to deliver the pottahs, upon being proved in the Court of Dewany Adawlut of the zillah, shall be punished by the Court by a fine proportioned to the expense and trouble of the ryot in consequence of such refusal. Actual proprietors of land, dependent talukdars, and farmers, are also required to cause a pottah for the adjusted rent to be prepared and tendered to the ryot, either granting the same themselves, or entrusting their agents to grant the same.

(2).—REGULATION IV, 1794, SECTION V.

The ryots in the different parts of the country frequently omitting or refusing to take out or receive pottahs, although the persons from whom they are entitled to demand them are ready to grant them in the form and on the terms prescribed by the regulations, it is declared that, if a proprietor or farmer of land or a dependent talukdar, after the approbation of the collector to the form of the pottah or pottahs for the lands in his estate or farm shall have been obtained, as prescribed in section LVIII, Regulation VIII, 1793, shall fix up in the principal cutcherry or cutcherries of his estate or farm a notification in writing under his seal and signature, specifying that pottahs according to the form approved, *and at the established rates*, will be immediately granted to all ryots who may apply for them, and stating where and when, and by whom, the pottahs will be delivered, the notification shall be considered as a legal tender of a pottah, and the proprietor of land, &c., shall be deemed to have complied with the orders in Regulation VIII, 1793, and the persons so tendering pottahs shall be entitled to recover the rents due to them from such ryots, either by the process of distraint laid down in Regulation XVII, 1793, or by suit in the Dewany Adawlut.

SECTION VI.

If a dispute shall arise between the ryots and persons from whom they may be entitled to demand pottahs, regarding the rates of pottahs (whether the rent be payable in money or in kind), it shall be determined in the Dewany Adawlut of the zillah in which the lands may be situated, according to the *rates established in the pergunnah for lands of the same description and quality as those respecting which the dispute may arise.*

(3).—SECTION VII.

The rules in the preceding section are to be considered applicable, not only to the pottahs which the ryots are entitled to demand in the first instance under Regulation VIII, 1793 (*d*, 1 above), but also to the renewal of pottahs which may expire or become cancelled under Regulation XLIV, 1793 (*c*, 2 and 3 above); and to remove all doubt regarding

the rates at which the ryots shall be entitled to have such pottahs renewed, APP. XVI. it is declared that no proprietor or farmer of land, or any other person, shall require ryots whose pottahs may expire or become cancelled under the last-mentioned regulation, to take out new pottahs at higher rates than the established rates of the pergunnah for lands of the same quality and description; but that ryots shall be entitled to have such pottahs renewed at the established rates, upon making application to the person by whom their pottahs are to be granted, in the same manner as they are entitled to demand pottahs in the first instance.

RATE OF
ASSESSMENT
UNDER THE
PERMANENT
SETTLEMENT
OF 1793.

Para. 14.

14. These extracts contain all that was said in the Regulations of 1793 respecting the status and privileges of ryots; they may be considered under the heads of (1) the rate of assessment; (2) the tenure of the ryot; (3) the record of his rights; (4) the permanency of the rate of assessment, or to whom belongs the unearned increment. As to rates of assessment, we find that the following are mentioned in the several extracts, *viz.* :—

I.—UNDER-POTTAHS TO BE GRANTED BY THE ZEMINDAR AS PART OF THE PERMANENT SETTLEMENT.

(a). A fixed amount of rent;—in which existing customary rates and *abwabs* were to be consolidated by the zemindars in concert with the ryots “in one specific sum.” (Para. 10, a.)

(b). Where it is the established custom to vary the rate according to the produce, the special rate for the particular article of cultivation is to be inserted in the pottah, which, in addition, should, in all practicable cases, specify the exact amount of rent and the quantity of land. Where the rent is levied in kind, the rate and terms of payment, and proportion of the crop to be delivered, with every condition, were to be specified. (Para. 12, (a) 1 and 2, and (b) 1 and 2).

(c). *In time*, zemindar and ryot may find it to their advantage to enter into special agreement for a rate per beegah which, unlike (b), shall not vary with the kind of produce, so as to leave it discretionary with the ryot to cultivate any kind of produce he likes. (Para. 12 (a) 1).

II.—KHOODKASHT RYOTS.

The pergunnah rate;—unless they claim a lower rate under a pottah, or on proof that they paid such lesser rate for more than three years before the decennial settlement. (Para. 12, section (c) 2).

III.—UNDER TEMPORARY LEASES.

The rate (specified in the lease) that was being paid at the time of the decennial settlement; thereafter, *i. e.*, on expiration of lease, the established pergunnah rate. (Para. 12 (c) 1, and para. 13, (d) 2).

IV.—WITHOUT ENGAGEMENTS, OR ON CANCELLATION OF ENGAGEMENTS ON SALE OF AN ESTATE FOR ARREARS OF REVENUE.

According to the established rates and usages of the pergunnah (para. 13, (a), and (c) 3).

APP. XVI. V.—ON RENEWAL OF TEMPORARY LEASES (III), OR OF CANCELLED ENGAGEMENTS (IV).

RATE OF
ASSESSMENT
UNDER THE
PERMANENT
SETTLEMENT
OF 1793.

Para. 15.

According to the established rates and usages of the locality.

15. It appears from this summary that for all classes of ryots, whether under old titles or under new engagements after the decennial settlement, there was but one authorised rate. *viz.*, the customary established rate of the particular locality;—the exceptions being (1st) any khoodkasht ryots (the expression khoodkasht-*kudeemee* nowhere occurs) who, under special pottahs, or under prescription of more than three years preceding the decennial settlement, paid less than the pergunnah rate that was customary for the great body of khoodkasht ryots; and (2ndly) pykasht ryots whose temporary leases remained unexpired at the date of the decennial settlement, but who, on expiration of those leases, had to conform to the established pergunnah rates.

16. In other words, the Regulations of 1793 prescribed as the general rule what is now, and has always been, the rule in ryotwari provinces, *viz.*, that the rate of assessment for the ryot should be fixed upon the land, irrespective of the persons who cultivate it. This general rate was fixed at the rate established by custom for each locality; and, as will be presently shown, the rate established by custom was immutable for the particular class of land and particular kind of special products of the soil. The exceptions to this general rate in favour of persons were only two—the one a permanent, the other a temporary exception. The permanent exception was in favour of those khoodkasht ryots (a minority of that body) who had held at rates lower than pergunnah rates from three years before the decennial settlement, and the hereditary successors of those khoodkasht those excepted holdings. The temporary exception was in favour of pykasht ryots (until the expiration of their leases) and the cultivators of newly-reclaimed waste lands (until expiration of the term for which privileged rates may be allowed them as an inducement to cultivate). Practically, the principle of assessment established by the Regulations of 1793 for ryots, old and new, tended to bring the whole body of cultivators under the ancient established pergunnah rates.

17. The extract in section (a) 1 of paragraph 12 seems on the surface to contravene, but on closer examination will be found to harmonise with this conclusion. The principle, which, according to that extract, the proprietors of land

ryots might, *in time*, find it convenient to adopt, instead of the customary rate, was one non-existent at the date of the settlement, and was a mere speculative idea of the framers of the regulations. As such, it was mentioned as simply a permissive or optional rate, which, depending on *mutual agreement* between the zemindar and ryot, gave no right to the former to impose it on the ryot, or to set aside the customary rate. The ideal optional rate had reference to the cases of rotation of crops, and to any other cases in which the customary rate varied according to the produce. In cases of rotation of crops, the rate varied every year with the crop, but still it was the ancient customary rate for the special product for its own year. Reckoning the rate for the whole term of rotation, it was the immutable customary rate of the pergunnah. Similarly, with regard to lands cultivated without rotation of crops, the ancient established rate of the pergunnah, which was binding on both zemindar and ryot, implied adherence by the ryot to the particular articles of produce, *viz.*, the common staple products of the locality, for which the rate had been established. It was not open to him to vary the produce, without also changing his rate to the established or customary rate for the new product. Every such alteration of produce, whether in a rotation of crops or in the second class of cases, involved a corresponding alteration of the pottah, for insertion therein of the new customary rate. The extract in paragraph 12, section (a) 2, provides for these alterations of the pottah in conformity with established custom. But, inasmuch as under the regulations, and as the weak point of the permanent settlement, the pottah was the only record of the rights of the ryots, the framers of the regulations threw out, as a forlorn hope, the idea expressed in the extract in para. 12, section (a) 1, that the zemindar and ryot would agree for a rate per beegah, irrespective of the kind of produce, after which there would be no further alteration of the pottah. This rate, by special agreement once entered into, would be as perpetual as the zemindar's rent, and the conditions prescribed for the agreement respecting the rate were such, that the rate would conform to, and be based upon, the ancient established rates of the pergunnah; for the regulation made it optional with the ryot to agree to this special rate, irrespective of produce, if he preferred it to the established pergunnah rates for the several kinds of produce. Necessarily, the ryot's choice, if in favour of an invariable rate, would be for an amount about es

RATE OF ASSESS-
MENT UNDER
THE PERMANENT
SETTLEMENT.

Para. 17, contd.

APP. XVI. to the average of the established local rates for varying kinds of produce. Thus, the extract in section (a) 1 did not empower the zemindar to put aside the established pergunnah rates, or to enhance them;—it merely provided a means by which zemindar and ryot could, by mutual agreement, simplify the statement in the pottah of the established pergunnah rates by which zemindar and ryot alike were bound.

RATE OF ASSESS-
MENT UNDER
THE PERMANENT
SETTLEMENT.

Para. 17, contd.

18. It may be noted, further, that the Regulations of 1793 nowhere speak of “equitable or fair rates of rent” for ryots, as if the rent were matter of opinion or bargain; they speak of existent actual rates, or matters of fact, determined by custom as established pergunnah rates; and when, six years later, Regulation VII of 1799, section XV, clause 7, spoke of a “rent determinable on certain principles according to local rates and usages,” the expression was restricted to the rents payable by certain holders intermediate between the zemindar and the ryot.

19. The next head in paragraph 14 is the tenure of the ryot, as exhibited in the extracts in paragraphs 12 and 13; see para. 14. Under native rule, the offices of kanungo and patwari were kept up independently of the zemindar; and the records of these officers showed the quantity of land held by each ryot, and the rate at which he held it. These entries in the official records constituted the title and security of the khoodkasht ryots, who accordingly, at the date of the permanent settlement, held their lands without leases or pottahs, except when they held at lower than the pergunnah rates; in which case they had pottahs which secured the favoured rates to them. Accordingly, at the date of the permanent settlement, there were the following classes of ryots:—

- (1). Khoodkasht ryots at favoured rates, secured by pottahs.
- (2). Khoodkashts who paid the maximum or pergunnah rates, and had no pottahs.
- (3). Embryo khoodkashts, or the descendants of hereditary cultivators, who were occupying newly-reclaimed waste land with or without lease, with eventual liability to pay the pergunnah rate.
- (4). Pykashts, or stranger cultivators from other villages, who held under temporary leases at favoured rates, and who, according to established usage, attained to the status of khoodkashts by long, that is, by permanent residence, on their paying the established pergunnah rate.

20. The third and fourth classes in the preceding paragraph, who held at temporary rates less than the pergunnah rates, are included in the Regulations of 1793 in the extract para. 12 (e) 1; the minority of khoodkasht ryots who held at favourable rates (first class in preceding paragraph) are also mentioned; but the great body, the vast majority by far, of the cultivators in 1793, *viz.*, the khoodkasht ryots who held without pottahs and who paid the full pergunnah rates, are not specifically mentioned as khoodkashts in the Regulations of 1793, for the reason that, as they already paid the pergunnah rates, and as the zemindars were prohibited from exacting more than the pergunnah rates from any one, specific mention of these khoodkashts was not necessary. Inasmuch, however, as they had a substantial right of property in land, which they had derived from ancient custom, and as they constituted the mass of the cultivators, the mere omission to notice them, specifically, in a regulation which, as it did not touch their pergunnah rate of rent, did not concern them, had not the effect of disestablishing them. If it had been intended to disestablish them, the regulation would have said so, and would no doubt have provided for them the requisite compensation, without which it was no more competent for the Government, any more than it was the intention of the Government, to destroy their rights.

APP. XVI.
RYOTS' TENURES
UNDER THE
PERMANENT
SETTLEMENT.

Para. 21.

21. The khoodkashts who paid full pergunnah rates are, however, mentioned in the Regulation VIII of 1793, though not as khoodkashts. A comparison of the extract from that regulation in paragraph 13, section (d) 1, with the detail in paragraph 14, shows that the extract in (d) 1 refers mainly, though not exclusively, to the khoodkashts who paid the full pergunnah rates. Now, the structure of the regulation in that extract is such as to establish, rather than to destroy, the proprietary right of the khoodkasht ryot; it entitles him to demand a pottah at his full pergunnah rate of rent from the zemindar, and to enforce the demand in a civil suit, if necessary. In the absence of any other record of the rights of khoodkasht ryots, the pottah to be given by the zemindar was to constitute the record. This regulation, accordingly, was framed for the security of the ryot; though, like almost every other law passed in his favour, the zemindars have perverted it to his undoing; and the courts only too effectually helped them, by regarding the pottah not, as it was meant to be, a mere record, for the ryot's security, of rights independent of the pottah, but as the document from which

APP. XVI. (and therefore from the zemindary author of which) the ryot derived his rights. This error underlies Sir Barnes Peacock's reasoning in his judgment on the great Rent Case.

THE POTTAH
WAS A MORE
RECORD OF THE
RYOT'S SEPARATE
RIGHT.

Para. 21, contd.

22. That the pottah was designed merely as an additional evidence of a ryot's right, which was otherwise derived and was independent of the pottah, is also evident from Section 62, Regulation VIII of 1793, or the rules respecting putwarees. Those rules would have been superfluous with tenants-at-will. They were framed for the security of ryots having rights of occupancy, who held without lease, on rents known as the customary pergunnah rates.

23. It may also be mentioned, as limiting the zemindar's and establishing the ryot's proprietary right, that the former was restrained from realising rent until after harvest; and he had no power to raise the rent beyond the established pergunnah rate for any class of ryots whatever; also he had but a limited power of restricting the occupation of land by ryots, *viz.*, that of simply fixing, for other than permanent hereditary occupants, *i.e.*, for non-residents from another village, the term of lease during which they might occupy on paying the established pergunnah rate. On the expiration of his temporary lease, the pykasht ryot was entitled to demand its renewal at the established pergunnah rate (paragraph 13, section d 2).

24. The remaining head in paragraph 14 is the permanency of the ryot's assessment, and whether the unearned increment belonged to him or to the zemindar under the Regulations of 1793. We have seen that the khoodkasht ryot could not be required to pay more than the pergunnah rate; that the pykasht ryot, at the end of his temporary lease, had to pay the pergunnah rate; and that the ryot who was employed on a beneficial rate of rent, in bringing waste land into cultivation, also paid, eventually, no more than the established local rate. In short, for old lands or new, for resident cultivators or non-resident, the established customary pergunnah rate was the eventual rate for both kinds of land and for all ryots alike, excepting the comparatively few who paid at favoured rates. If, therefore, the zemindar obeyed the law, the customary, established, prevailing pergunnah rate would be immutable. It follows that the unearned increment, which in process of time would accrue beyond the established rate, from a rise of prices, belonged to the ryot, unless, *firstly*, the established rate contained a germ of development through which the amount of rent would

increase, without express provision for the increase in the Regulations of 1793; or, *secondly*, unless those regulations allowed, and we know that they did not allow, of an increase of the established customary rate of the pergunnah.

APP. XVI.
PERGUNNAH
RATE IMMUTA-
BLE.
Para. 26.

25. As to the possibility of increase of the pergunnah rate through a hidden germ of development, such germ could only exist in a pergunnah rate of a kind which implied a yearly division of the crop between the Government and the ryot, according to the market value of produce each year. In such case, necessarily, the Government's share of rent, or the portion thereof transferred to the zemindar, would increase, *pari passu*, with a rise of prices, without help from any ingenious rule of proportion. This was, and is, the case in Behar, where the condition of the ryots is wretched; but there was no scope for such expansion of the pergunnah rate in Bengal. As shown in Appendix IX, paragraph 6, section VIII, and as observed by the Select Committee of 1812 in the Fifth Report, "the difficulty was increased by a difference which had originally prevailed in the mode of forming the assessment in Bengal from what has been described as the practice in Behar. In Bengal, instead of a division of the crop, or of the estimated value of it in the current coin, the whole amount payable by the individual cultivator was consolidated into one sum called the *assul*, or original rent." This fixed amount was irrespective of any particular price of produce; not varying with such price, it was the ancient established maximum pergunnah rate, or that paid by the great body of cultivators, namely, all the khoodkasht ryots who held without pottahs. As these khoodkashts were protected from any increase of this established rate, whilst others who paid less were protected from an increase beyond the same established rate, which, as we have seen, was an amount fixed irrespective of current prices, it follows that the established pergunnah rate could not be legally increased beyond its amount in 1793. The regulations of that year explicitly recognise the established rate as the maximum.

26. They could not have done otherwise; for if those regulations had asserted (and no where do they countenance) the possibility of an increase of a maximum established rate which was fixed in amount, the assertion would have involved a contradiction in terms, as just explained. Perforce it is the practice of the majority which determines custom: the vast majority of cultivators were the khoodkashts, who

APP. XVI.

IMMUTABLE
PERGUNNAH
RATES.

Para. 26, contd.

paid the maximum pergunnah rates; it was not to their interest to vary the custom by consenting to new rates higher than the established pergunnah rate, which thus remained the rule for all new admissions to the privileges of resident cultivators. Hence, except by encroachments or high-handed proceedings of the zemindars, the Regulations of 1793 provided no way whatever of increasing the pergunnah rates of 1790,—an increase from rise of prices being barred as explained in paragraph 25.

27. Nor could the zemindars find any help outside the Regulations of 1793, in claiming the unearned increment from the ryots. Under native rule, the ancient established rate of *ryot's* rent was never increased; though the amount of land tax of the *zemindary* was increased periodically, or by arbitrary cesses. When the increase of the amount payable by the zemindary was periodical, it was obtained by taxing, at the old rates, the new cultivation in the zemindary since the last increase, the customary local rates of rent remaining unaffected;—when the increase was by an arbitrary impost or State *abwab*, the amount thus imposed on the zemindary was distributed among the ryots, in proportion to their previous rents, and was separately levied at a percentage thereon, without disturbing the established local rates. These arbitrary imposts were, in a measure, as observed by Warren Hastings and Sir John Shore, enhancements of rent from a rise of prices. But, with full knowledge of this fact, Sir John Shore proposed, Lord Cornwallis concurred, and accordingly the Regulations of 1793 prescribed, that then existing rates of rent of the ryots, with *abwabs*, should be consolidated in one amount, thus giving to the zemindars the benefit, through the old *abwabs* therein consolidated, of all enhancements up to 1793 from a rise of prices. But (fresh *abwabs* being prohibited) it was also enacted that the computed amount in which old *abwabs* and the established rate were consolidated should be entered in the pottah, which it was made imperative on the zemindar to grant, and which was to constitute the whole amount recoverable from the ryot by the zemindar or his successor. Thus the only ancient form for the enhancement of rents on account of a rise of prices, *viz.*, fresh *abwabs*, was deliberately withdrawn from the zemindar by the Regulation or Act which also fixed his own rent in perpetuity, free from any enhancement from a rise of prices.

28. Hence, neither explicitly nor by implication, did the Regulations of 1793 countenance any pretence, that the un-

earned increment could become due from the ryot to any body. The amount to be entered in the pottah, before the end of 1791, was to constitute the whole amount recoverable thereafter from the ryot. The regulations neither provided for, nor allowed of, the revision of the amount once entered in the pottah, except where the cultivator varied the produce of his land, when there was to be a corresponding alteration of the pottah, at the ancient established rates, and when the substituted rate was to become the pergunnah rate. With this sole exception, and that only a nominal exception (for the excepted alteration still conformed to the ancient customary rates for the altered produce), the pottah issued was the formal permanent record of the ryot's rights and obligations. As stated by Lord Cornwallis, the zemindar was not to recover from the ryot any amount in excess of that entered in his pottah; and the Regulations of 1793 were in harmony with this decision.

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IMMUTABLE
PERGUNNAH
RATES.
Para. 29.

29. A tacit assumption that the pergunnah rates of 1790 were not susceptible of increase, occurs in two other Regulations of 1793—the Partition and the Sale Laws—though the Sale Laws have been strangely perverted to the enhancement of rent, and of pergunnah rates.

I.—PARTITION OF ESTATES.—Regulation XXV of 1793, section VIII, contained the following provisions:—

(a). The public revenue is to be assessed upon each estate into which the property may be ordered to be divided, in conformity to the rules prescribed in Regulation I, 1793; but in selecting the mehals or villages to be included in each separate estate, the advantages or disadvantages arising from situation, the vicinity of roads or navigable rivers, the nature and quality of the soil and produce, the quantity of waste land, the depth at which water may be procurable, &c., and every other local circumstance affecting the present, or likely to influence the future, value of the lands, are to be duly considered, and the mehals or villages to be included in each estate fairly and impartially selected accordingly.

(b). A strict adherence to the above rule is essential to rendering the division equitable. For if the mehals or villages containing a large proportion of waste land and situated in the vicinity of a navigable river, or possessing other local advantages, are included in one estate, and the mehals or villages liable to inundation, or comprising a small proportion of waste land, or situated at a greater distance from a navigable river, or subject to other local disadvantages, are included in another, it is obvious that the selection of the mehals and villages included in the two estates will not be fairly and impartially made, although the public revenue may be assessed upon each estate agreeably to the rules prescribed in Regulation I, 1793, as far as regards their immediate produce at the time of the division. The former estate will be more valuable than the latter, from being capable of improvement without being

APP. XVI. to be affected by the calamities of season; whilst the latter will be subject to those calamities without possessing the same advantages as the former.

SALE LAWS
IMPLIED
ADHERENCE
TO THE OLD
PERGUNNAH
RATE.

Para. 29, contd.

Had zemindars possessed a right of generally enhancing rents, the circumstance of ryots paying low rents in one estate, and being rack-rented in the other, would have constituted such a signal superiority in the former, as could not have been omitted from the enumeration of possible advantages and disadvantages in the foregoing extract *b*. That no such mention occurs, is proof that no such power of enhancing rent existed in 1793.

II.—SALE LAWS.

(*a*). For the correct interpretation of these laws it should be constantly borne in mind that (1st) in 1793 one-third or more of the cultivable lands was waste, that is to say, the bulk of the ryots were resident cultivators or khoodkashts, for they had no need to quit their own village, unless to escape oppression; and not even then, in any considerable number, where oppression was general; (2nd) the khoodkashts being the preponderant class of cultivators, the rent which they paid (and which was higher than that of pykasht ryots) formed the pergunnah rate; (3rd) the khoodkashts on full pergunnah rates held without pottahs; and zemindars or farmers entered into written engagements with only those ryots who paid less than the pergunnah rates, *i.e.*, the classes which held written engagements were—

- (1). Old khoodkashts, who possessed written engagements, entitling them and their descendants to hold at less than the pergunnah rates.
- (2). Khoodkashts, on land newly reclaimed from waste, for which, in the first few years, less than the pergunnah rate could be paid only on written engagements.
- (3). Pykashts who, until their residence in the village matured into occupancy right subject to payment of the full pergunnah rate, could hold on only temporary lease from the zemindars, practically at less than the pergunnah rate.
- (4). Khoodkashts of other villages, attracted by the zemindar to a stranger village by the offer of low rents, such offer being necessarily secured by a written engagement.

(*b*). The principle of the Sale Laws may be gathered from the following regulations, *viz.*, (1st) as to transfers and sales

otherwise than for arrears of revenue; (2nd) as to sales for APP. 2
arrears of revenue, *viz.*:—

TRANSFERS OR SALES OTHERWISE THAN FOR ARREARS OF REVENUE.

(1).—REGULATION XLIV OF 1793.

Where the division of a joint estate shall be made at the request of the proprietors, or pursuant to a decree of a Court of Justice; or

If the whole or a portion of any estate shall be transferred by public sale (excepting it be so disposed of for the discharge of the arrears of the public revenue), or by private sale, gift or otherwise; or devolve to any person by inheritance, under the Hindu or Mahomedan law:—The sharers, in the first-mentioned case, of division of a joint estate,—or the person or persons to whom the lands may be transferred, or on whom they may devolve by inheritance, in the second-mentioned cases,—shall not demand from their dependant talookdars, under-farmers, or ryots, any sum beyond the amount specified in the *engagement, lease, or pottah*, which may have been entered into between them and the former proprietor previous to the partition, transfer, or devolution, but such engagement (if not repugnant to section II of this Regulation, for limiting to ten years the term of leases, pottahs, &c., at favoured rates) shall remain in full force until the term of it shall have expired.

(2).—REGULATION XX OF 1795 (for disposing of lands at public sale, pursuant to decrees of the Courts of Justice).

The rules in the preceding sections are to be considered applicable to lands held exempt from the payment of revenue to Government, as far as they may be applicable to the circumstances thereof, with this addition, that the purchaser of such exempted lands is to be considered as having succeeded only to the rights of the former proprietor, and that the transfer is not to bar any claims of Government for the recovery of the public dues, under any existing regulation, or any other regulation that may be hereafter enacted.

(3).—REGULATION VII OF 1799.

The purchaser under a decree of Court or by private sale is entitled, by the terms of his purchase, only to the rights of the late incumbent (except in the cases provided for by Regulation XLIV, 1793). Whatever disputes may arise between him and the under-tenant, must be settled between them, or by the usual course of law, in like manner as they would have been between the under-tenants and the late incumbent, if the sale had not taken place.

(4).—REGULATION VIII OF 1819 (PUTNEES, DURPUTNEES, &c.).

1st. Any talook or saleable tenure that may be disposed of at a public sale, under the rules of this Regulation, for arrears of rent due on account of it to the zemindar, is sold free of all incumbrances that may have accrued upon it by act of the defaulting proprietor, his representatives, or assignees (unless the right of making such encumbrances shall have been expressly vested in the holder by a stipulation to that effect on

SALE LAW
IMPLIED
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RATE.

Para. 29, c

APP. XVI. the written engagements under which the said talook may have been sold). No transfer by sale, gift, or otherwise, no mortgage or other limited assignment, shall be permitted to bar the indefeasible right of the zemindar to hold the tenure of his creation answerable, *in the state in which he created it*, for the rent, which is, in fact, his reserved property in the tenure (except the transfer or assignment should have been made with a condition to that effect, under express authority obtained from such zemindar).

SALE LAWS
IMPLIED
ADHERENCE
TO THE OLD
PERGUNNAH
RATE.

Para. 29, contd.

2nd. In like manner, on sale of a talook for arrears, all leases originating with the holder of the former tenure, *or creative of a middle interest between the resident cultivators and the late proprietor*, must be considered to be cancelled, except the authority to grant them should have been specially transferred; the possessors of such interests must consequently lose the right to hold possession of the land, and to collect the rents of the ryots; this having been enjoyed merely in consequence of the defaulters' assignment *of a certain portion of his own interest the whole of which was liable for the rent*.

3rd. Provided, nevertheless, that nothing herein contained shall be construed to entitle the purchaser of a talook or other saleable tenure, intermediate between the zemindar and the actual cultivators, (1st) to eject a khloodkasht ryot, or resident and hereditary cultivator, (2nd) nor to cancel *bond fide* engagements made with such tenants by the late incumbent or his representative, except it be proved in a regular suit, to be brought by such purchaser, for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor.

The import of the disjunctive "nor" is, that all resident cultivators who paid the full pergunnah rates were protected, and in addition, all similar cultivators who paid lower rates under such engagements entered into with the former proprietor as were in accordance with the law (para. 15 of this Appendix). In other words, the power of enhancing rents beyond the pergunnah rate was not recognised.

SALES OF LAND FOR ARREARS OF REVENUE.

(5).—REGULATION VII OF 1799.

Provided further, that whenever the land may have been sold to discharge an arrear of the public assessment upon such land, or upon the estate of which such land formed a part, no private claim thereto on the plea of sale, gift, or other transfer; or of pledge, mortgage, or other assignment; or any other private claim whatever, is to be admitted by any Court of justice in bar of the prior and indefeasible right of Government to hold the whole of the lands answerable in the first instance for the public revenue assessed thereupon, as immemorially known and acknowledged, and frequently declared in the regulations and otherwise.

(6).—REGULATION XI OF 1822, SECTION 30.

(a). In pursuance of the principle of holding the estate of a defaulter answerable for the punctual realisation of the Government revenue in the state in which it stood at the time the settlement was concluded (at

which time, by the dissolution of its previous engagements, Government must be considered to resume all rights possessed on the acquisition of the country, save where otherwise specially provided), all tenures which may have originated with the defaulter or his predecessors being representatives or assignees of the original engager, as well as all agreements with ryots or the like settled or credited by the first engager or his representatives, subsequently to the settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, shall be liable to be avoided and annulled by the purchaser of the estates, or mehal, at the sale for arrears due on account of it, subject only to such conditions of renewal as attached to the tenure at the time of settlement aforesaid, saving always and except *bona fide* leases of ground for the erection of dwelling houses or buildings, or for offices thereto belonging, &c.

APP. XVI.

HALF LAND
IMPLED
ADHERENCE
TO THE OLD
PERGUNNAH
RATE.

Para. 29, contd.

III.—

(a). The sales of estates least injurious to sub-tenures are private sales; the purchaser, in these cases, acquiring the rights of merely the out-going proprietor. The negative form in which the rights of a purchaser of this class are stated is significant; he is restrained from raising the rents of those who may have entered into engagements with his predecessor, for the term of their engagements; there was no similar injunction against his raising the rents of other ryots who paid customary rates. The Legislature in 1793 to 1799 evidently took for granted that neither out-going zemindar nor incoming purchaser ever dreamt or could ever dream of enhancing these rates, and so raising the general pergunnah rates;—their power was limited to raising to the pergunnah rate, on expiration of temporary leases, any who held at favourable rates.

(b). Sub-tenures were injuriously affected most when an estate was sold by Government for arrears of revenue, or when a sub-tenure of later date than 1790 was sold at the instance of a zemindar for arrears of rent. In these cases the status of all the tenants on the estate, or within the sub-tenure, reverted to what it was at the date of the permanent settlement, as regards Government sales for arrears of revenue, or at the date of the creation of the sub-tenure by the zemindar, as regards sales, at his instance, for arrears of rent. In these latter cases the tenures annulled by the sale were (as explicitly stated) the middle interests between the zemindar or his original creation of sub-tenancy, and the resident cultivators. The resident cultivators themselves were protected from enhancement of rent. (II, 4).

(c). (1). On the sale of an estate by Government for arrears of rent, all middle tenures (created since the separation of

APP. XVI. ment) between the zemindar and the resident cultivator, were liable to be annulled, consequent on the estate reverting by the sale to its status in 1790. For ryots or cultivators, this reversion to the *status* of 1790 involved payment by them of the pergunnah rates, *plus abwabs*, of that year, unless any of them could prove a title, older than 1787, to pay a lower rate.

SALE LAWS
IMPLIED
ADHERENCE
TO THE OLD
PERGUNNAH
RATES.

Para. 29, contd.

(2). The amount of the Government assessment on a permanently settled zemindary in 1878 is the same as it was in 1790; that assessment would therefore be amply secured if the ryots of such zemindary were to pay now the same pergunnah rate of rent as in 1790, and if all intermediate tenures between the zemindar and the resident cultivator, created since 1790, were to be annulled. Neither more nor less than this is involved in the theory that, for the security of the public revenue, all interests in an estate which is sold for arrears of revenue should revert to their *status* in 1790.

(3). There has indeed been a great increase of cultivation, and of cultivators who pay rent, in permanently settled zemindaries since 1790; but inasmuch as the Government assessment of that year is consequently recovered now from a much greater number of cultivators than in 1790, the increased cultivation negatives instead of strengthening the ryot's liability to pay more than the pergunnah rate of 1790, which sufficed to make up that assessment even when it was levied from a smaller area of cultivated land and from a smaller number of cultivators.

(4). Enhancement of the ryot's rent beyond the pergunnah rate of 1790, *plus abwabs* of that year, is repugnant therefore to the spirit and to the theory or principle of the Sale Laws of 1793 and 1799; and the letter of the laws harmonised with their spirit; what stood cancelled, or became liable to be annulled by the sale of an estate for arrears of revenue, were the *engagements entered into* by the zemindar, or his successors, since the settlement, with ryots, &c.; but we know that these written engagements were executed only when the ryots required favourable rates, *i.e.*, lower than the pergunnah rates; in the vast majority of cases in which ryots paid the pergunnah rates, they held without written engagements from the zemindar; moreover, the great body of the ryots, *viz.*, the khoddkashts, held independently of the zemindar, while they held without pottahs even until 1859, (Appendix XIX, para. 13, section III a 3). The Sale Laws which cancelled engagements since 1790, for specific rents

lower than the pergunnah rate, did not affect the tenures of these resident cultivators who held at pergunnah rates.

(d). The different view of the Sale Laws which is accepted will be examined in the sequel; here it suffices to note, as the conclusions established in (a), (b), and (c), that the Sale Laws did not empower the zemindar to raise the rent of the ryots beyond the established pergunnah rate of 1790, and that any such enhancement was repugnant to the spirit, the principle, and the letter of those laws.

30. Thus, in the Regulations of 1793 and 1794 which form the deed of the permanent zemindary settlement, and even in later regulations the zemindar's power of enhancing ryot's rent beyond the established customary rate in 1790 was not recognised either in the Sale Laws or in any other of those regulations.

31. Before the permanent settlement, the right to the unearned increment belonged to Government: by that settlement, Government surrendered the right—not however to the zemindar, for it prohibited him from levying fresh *abkacs*, the only form in which the State had levied the increment in Bengal. Necessarily, the surrender was to the ryot; and need there was that it should be so left to him, as his only benefit from a permanent settlement which, in the words of its authors, was designed mainly for his welfare, “whose labours are the riches of the State,” and for promoting cultivation by “securing to every man the fruits of his own industry.” The ryot having done everything, the zemindar nothing, to improve and extend cultivation,—no more in equity, than under the Regulations of 1793, did the unearned increment belong to the zemindar.

32. Thus the Regulations of 1793 established a permanent rate of rent for the ryot; and this not indifferently, but of set purpose—not as a new idea, but in accordance with the clear deliverance of Lord Cornwallis' predecessors in the government, in conformity with the explicit proposal of Sir Philip Francis, that, in the permanent settlement the ryot's rent should be so fixed, and in harmony with the decision of the Court of Directors that the security of permanency should be given to the ryot as to the zemindar. The spirit, intent, and express purpose of the Regulations of 1793, in this regard, were defeated by the zemindars setting at naught the prohibition, and turning it into an engine of oppression. The ryot, however, is entitled to benefit by his own wrong.

APP. XVI.
THE UNEARNED
INCREMENT.
IS NOT THE
ZEMINDAR'S.

Para. 32.

APP. XVI. that wrong the ryot's rent to this day would have remained permanently fixed at its amount in 1793; and in the degree that the rent is higher now than in 1793, by so much have the zemindars profited by their own wrong beyond the letter, spirit, and intent of the Regulations of 1793; so that, if further enhancement of ryots' rent were to be now prohibited, the ryot would secure but a small part of the justice and protection for which the faith and the honour of the nation were, in the words of the Court of Directors, as solemnly pledged to him as to the zemindar, in that perpetual settlement which, to this day, has left the ryot's rent unsettled,—though the secure enjoyment by the ryot of the fruits of his own industry was the beginning, the end, the key-note, of the arguments by which Lord Cornwallis justified the alienation of the State's revenue—not for the purpose of enriching the few, but for laying deep, in the well-being and happiness of the great body of cultivators, “the foundation of the prosperity of Bengal, and of the glory and honour of England!”

THE UNHARNED
INCREMENT
IS NOT THE
ZEMINDAR'S.

Para, 32, contd.

33. Given, what the Regulations of 1793 clearly imply, that the demand upon the ryot was permanently limited by the perpetual settlement, then the memory of Lord Cornwallis is rescued from the shame of his having by statute bestowed property on zemindars at the expense of millions of cultivating proprietors. The demand upon the ryot being permanently limited, the property then bestowed upon the zemindar was carved out of the Government's share in the produce of the soil, without legal power to the zemindar to encroach on the ryot's share. And from this it follows that the rights of ryots, which were thus reserved outside the Government and the zemindar's shares, were not, after the permanent settlement, derived from the zemindar.

34. Respecting the status of zemindars as proprietors of the soil, it may be noted as follows:—

I. By a custom dating from the origin and development of private property in land, the property in land in Bengal down to the permanent settlement, and later, belonged to the resident cultivators in the several villages, by a title which it was not competent for Government or for Parliament to annul without allowing a compensation which was never given (Appendix I).

II. The origin and various incidents of the zemindary tenure, down to the time of the permanent settlement, show that the zemindar's was an office the tenure of which did not constitute him proprietor of all the land in his zemindary (Appendix VI).

III. Some years before the permanent settlement, in 1789, the zemindar, who till then had been a mere superintendent of land and

collector of revenue, was styled landholder by the Government, in order thus to evade a jurisdiction over him which had been asserted by the Supreme Court, Calcutta (Appendix VI, paras. 12 and 13).

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ZEMINDAR A
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Para 35.

35. The very limited sense in which the zemindar was proprietor of the soil, down to the time of the permanent settlement, is apparent also from the following extracts:—

I.—SELECT COMMITTEE OF SECRECY, APPOINTED BY THE HOUSE OF COMMONS TO INQUIRE INTO THE STATE OF THE EAST INDIA COMPANY IN 1773.

(a). Your Committee having inspected the books and correspondence of the Company, and having examined Harry Verelst, Esquire, late President of Fort William in Bengal, who had been employed for several years in the collection of part of the said revenues, your Committee find that * *

(b). All the lands of the said provinces are considered as belonging to the *Crown*, or sovereign of the country, who claims a right to collect rents or revenues from all the said lands, except such as are appropriated to charitable and religious purposes; which, having been granted by different Princes, are understood, by the general tenor of such grants, to be exempted from payment of any rent to the sovereign.

Here the proprietary right spoken of was simply in the rent paid by the ryot, not in the soil; whether the land was held rent-free or not, the ryot paid all the same, in the one case to the State, in the other to the alienee of the State's share or rent.

(c). And Mr. Verelst informed your Committee that, by the ancient rule of Government, agreements with the ryots for lands, which they and their families have held, were considered as sacred, and that they were not to be removed from their possessions as long as they conformed to the terms of their original contracts; but that this rule had not always been duly observed.

(d). And your Committee having enquired whether the Raja, Zemindar, Farmer, or Collector, have a right to lay any duties, or augment the old ones by their own authority, they find that they have no such right,—though the books and correspondence of the Company afford many instances of the country having been exceedingly distressed by additional taxes levied by the Zemindar, Farmer, or Contractor, but not so much by the two former as by the latter. And Mr. Verelst informed your Committee that the Government *have a right to call upon them for everything so collected*, and that they have been called to an account, since the Company held the Dewannee, in several instances.

(e). Your Committee find that the *Rajas* and *Zemindars* have certain lands, perquisites, and allowances, which they hold in virtue of their *offices* for their support. And your Committee find that the *rents* arising from all the other lands of the said provinces, besides those held by grants in the manner above mentioned, are paid in such proportion as

APP. XVI. is settled *annually* by the Dewan with the several zemindars, farmers, or collectors, who *rent* or hold the said lands.

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Para. 35, contd.

(f). The Dewan collects the revenues by leasing them out to the Rajas or Zemindars, who are considered as having a *sort* of hereditary right, or at least a right of *preference* to the *lease* of the revenues of the province to which they respectively belong—or to other farmers under the name of izardars, and other appellations—or to officers appointed by Government, under the names of fouzders, aumils, and tussildars, with all of whom the Government make, in general, annual engagements for the revenue of the several districts.

(g). And your Committee find by the correspondence of the Company, that the President and Council of Fort William are endeavouring to ascertain the amount of the Mofussil collections, or the revenues levied by the Raja, Zemindar, or Farmer, in the several districts of Bengal, in order to fix the profits of the said Raja, Zemindar, or Farmer at a stated and reasonable sum, to prevent in future undue charges in the collections, and to preserve the ryot from oppression by undue, additional, and arbitrary demands.

These extracts clearly assert that the State's property was in the rent recovered from the ryot, not in the soil, and that the zemindar was not entitled to collect more than this gross Government rent out of which, exclusively, his charges and remuneration were to be paid.

II.—BOARD OF REVENUE IN CALCUTTA (1786).

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In conformity to an injunction of an Act of Parliament in 1784, and implied orders of the Court of Directors, the great question of zemindary pretensions to the property and inheritance of their territorial jurisdictions, was formally and deliberately agitated by the Board of Revenue in Calcutta, the members of which unanimously resolved, after the most mature consideration of sunnuds, records, practice, and local information, that the zemindars had neither proprietary nor heritable rights to the lands they held under the constitution of the Mogul Government; but that their tenures were merely temporary and official, in terms of their respective grants.

III.—FIFTH REPORT, SELECT COMMITTEE (1812).

(a). In the progress and conclusion of this important transaction (the permanent zemindary settlement), the Government appeared willing to recognize the proprietary right of the zemindars in the land—not so much from any proof of the existence of such right, discernible in his relative situation under the Mogul Government in its best form, as from the desire of improving their condition under the British Government, as far as it might be done consistently with the permanency of the revenue and with the rights of the cultivators of the soil. The instructions from home had warned the Government against the danger of delusive theories; and the recent inquiries had disclosed a series of rights and privileges, and usages, admitted in the practice of the Native Govern-

ment, from the principal zemindar down to the actual labourer in husbandry, which it was necessary should be attended to before the zemindar could be left to the uncontrolled management of his estate. The *talukdar*, the *chowdry*, the *mundul*, the *mokuddum*, had each his distinct right admitted under the Native Government.

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Para. 35, contd.

(b). The Court of Directors, in their reply (dated 29th September 1792) to the reference which was made to them on the progress of the settlement, and to the proposal of rendering it perpetual, expressed themselves in high terms of approbation of what had been done, and of assent in regard to what was further proposed to be accomplished. They seemed to consider a settlement of the rents in perpetuity, not as a claim to which the landholders had any pretensions, founded on the principles or practice of the Native Government, but a grace which it would be good policy for the British Government to bestow upon them. In regard to proprietary right to the land, the recent inquiries had not established the zemindar on the footing of the owner of a landed estate in Europe, who may lease out portions, and employ and dismiss labourers at pleasure; but, on the contrary, had exhibited from him down to the actual cultivator, other inferior landholders, styled talukdars and cultivators of different descriptions, whose claim to protection the Government readily recognized, but whose rights were not, under the principles of the present system, so easily reconcilable as to be at once susceptible of reduction to the rules about to be established in perpetuity. These the Directors particularly recommended to the consideration of the Government, who, in establishing permanent rules, were to leave an opening for the introduction of any such in future as from time to time might be found necessary to prevent the ryots being improperly disturbed in their possessions, or subjected to unwarrantable exactions.

IV.—SIR JOHN SHORE (*June 1789*).

A property in the soil must not be understood to convey the same rights in India as in England; the difference is as great as between a free constitution and arbitrary power. Nor are we to expect under a despotic Government fixed principles, or clear definitions of the rights of the subject; but the general practice of such a Government, when in favour of its subjects, should be admitted as an acknowledgment of their rights.

Para. 333.

V.—LORD CORNWALLIS.

For His Lordship's opinion, that "a more nugatory or delusive species of property could hardly exist" than the zemindar's proprietary right, see Appendix VI, paragraph 6, section VII; and yet, in the Regulations of 1793, he styled the zemindars "proprieters of the soil." By this Lord Cornwallis only meant that the zemindar was proprietor in that part of the Government's share of the produce of the soil which the Government allowed him to keep. This is evident from the curious perversion of views of pro-

APP. XVI. proprietary right which occurs in the following notice by his Lordship of the illegal levy of transit dues by zemindars:—

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MINUTE (18th September 1789).

Para. 35, contd.

(a). As to the question of right, I cannot conceive that any Government in their senses would ever have delegated an authorised right to any of their subjects to impose arbitrary taxes on the internal commerce of the country. It certainly has been an abuse that has crept in, either through the negligence of the Mogul governors, who were careless or ignorant of all matters of trade, or, what is more probable, connivance of the Mussulamaun, who tolerated the extortion of the zemindar that he might again plunder him in his turn.

(b). But be that as it may, the right has been too long established or tolerated to allow a just Government to take it away without indemnifying the proprietor for any loss. And I never heard that in the most free State, if an individual possessed a right that was incompatible with the public welfare, the Legislature made any scruple of taking it from him, provided they gave him a fair equivalent. The case of the late Duke of Athol, who a few years ago parted very unwillingly with the sovereignty of the Isle of Man, appears to me to be exactly in point.

If his Lordship compensated zemindars for taking from them that to which they had no right, and which they held only by robbing the public, much more readily would he have compensated the millions of cultivating proprietors if by his zemindary settlement he had annulled their rights. Inasmuch as he did not compensate them, it follows that his Lordship did not by Regulation VIII of 1793 annul their rights.

36. Thus, down to the decennial settlement, the proprietary right of zemindars was of the weakest kind, and of mushroom growth, compared with the ancient custom of several centuries which sustained the rights of the cultivating proprietors. Lord Cornwallis and Sir John Shore, however, had set up a theory, that the alleged large proportion of the produce of the soil, which, under native rule, was appropriated as the Government's share, left to the ryot no real property in the soil; though Sir John Shore had himself pointed out, what was of course known to the native rule, that the seemingly heavy rate of assessment on the khoodkasht ryot was lightened to him by his concealed cultivation of other land for which he paid no rent. From this assumption they deduced that the real property in the soil was represented by the Government's share; and, in dividing it with the zemindar, they styled him, in virtue of his share, proprietor of the soil. In accordance with this theory, the Regulations of 1793 restricted

the term "actual proprietors of the soil" to those, whether zemindars, independent talukdars, or other actual proprietors of the soil (chowdries), who paid revenue direct to Government, that is, paid the gross Government share of the produce of the soil, as recovered from the ryots, less their own shares.

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Para. 38.

37. That this property in the soil (in a technical sense only) was a new creation of the Government, is evident from the language in Regulation II, 1793, *viz.* :—

(a). The property in the soil has been declared to be vested in the landholders. * * The property in the soil was never before formally declared to be vested in the landholders :—

compared with the language in Regulation VIII of 1819, when the similar proprietary right of putnee talookdars was recognised for the first time ;—

(b). The right of alienation having been declared to vest in the holder of a putnee talook, &c.

38. The suitableness of the fiction by which the payers of land revenue into the Government treasury were declared proprietors of the soil, is apparent from Appendix XVII, para. 14; and the reasons for it may be gathered from paragraphs 34 to 36 of this Appendix, while an additional reason is stated in Sir John Shore's minute dated June 1789. In the 383rd paragraph he affirmed, as we have seen, that "a property in the soil must not be understood to convey the same rights in India as in England." Yet a few minutes later, in his 389th paragraph, he added—"If we admit the property of the soil to be solely *vested* in the zemindars, we must exclude any acknowledgment of such rights in favour of the ryots, except where they may acquire it from the zemindar." Sir John Shore was, doubtless, familiar with the fictions by which English law represented rights of property in land, more or less limited, or the conveyance or transfer of such rights ; and it was part of his plan that the same permanency of assessment which the Government bestowed on the zemindar should be secured to the ryot, through a record of his right in a pottah which the zemindar, a proprietor in a very limited sense, was to be *compelled* to grant to the ryot, in terms which would leave with the ryot the whole produce of the soil, except the Government's permanently limited gross share of that produce as determined by ancient custom. Only in this way is the glaring inconsistency between Sir John Shore's 383rd and 389th paragraphs intelligible : without this explanation, that inconsistency—the logic with which he coldly reasoned away proprietary rights, based on the custom

APP. XVI. of centuries, such as law has always held sacred, in favour of rights created by the breath of Government—would betray a levity in dealing with the proprietary rights of millions, who could not make themselves heard in the Council Chamber, such as would dishonour his memory.

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Para. 38, contd.

39. Yet English lawyers, saturated with fictions of the English law of real property, but imbued, nevertheless, with its reverence for rights founded on custom, have, from this one patent legal fiction in the Regulations of 1793, gravely reasoned away the only real proprietary rights existent in Bengal before the decennial settlement, which are traceable to the common source where all countries in Europe and Asia find the origin of the rights of private property in land.

40. Referring, however, to paragraphs 35 to 38 in this Appendix, it may be affirmed, with due deference to those able lawyers, that the right of property which the Government of 1793 vested in the zemindars by the Regulations of that year, was the right simply in a portion of the Government's limited gross share in the produce of the soil, which was claimable only under such conditions of established custom as left intact and permanent the ryot's portion or share of that produce, and as left with him the whole of the unearned increment in Bengal, where specific money rents prevailed in 1793, and a portion of that increment in Behar, where the rents in 1793 were ascertained by yearly division of the produce, and where the condition of the ryots to this day is wretched in the extreme.

41. If the zemindar understands his true interest, he will insist on this interpretation of his limited proprietary right in Government's strictly limited gross share of the produce of the soil;—so limited, the zemindar's interest has a certain great assurance of permanency. If, however, forgetful that what a breath of the legislature has made, a breath of the legislature can unmake, he stretch farther the interpretation of his mere statutory right, so as to hold that the Regulations of 1793 destroyed, in favour of his worthless miscreant predecessors, the ancient customary rights of millions of cultivating proprietors, whose labours constitute, in the words of the authors of the permanent settlement, the riches of the State, he will turn the Regulations of 1793 into a mystery of iniquity, which must continue to bear evil fruit,—to keep the land in unrest,—the conscience of English rulers unquiet,—and their subject millions in a constant tendency to deteriorate

towards cottierism, through a growth of population, a consequent increase of competitive rents, and the baneful influence of a landed system under which the so-called proprietors of land appropriate the unearned increment, while they divest themselves of the duties of property, and of the burden of supporting the unemployed poor, which proprietors of land, especially, should bear.

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REGULATION
XLIV OF 1793
DID NOT VITIATE
RYOT'S TITLE.
Para. 42.

42. Regulation XLIV of 1793 must be noticed. With the view of preventing zemindars from granting leases or pottahs at a reduced rent, for a long term or in perpetuity, it restricted them (until the issue of Regulation V of 1812, section II) from granting either lease or pottah, but did not debar them from letting waste land for a short term, at a low but progressive rent, according to the custom of the country (para. 13, section c); for a period exceeding ten years. This regulation was directed against the under-mentioned practices of the zemindars, but, as usual, it was turned to their advantage, and to the destruction of ryots' rights.

I. At the time of the permanent settlement, one-third of the cultivable land was waste. Those zemindars who understood the position attracted ryots from other zemindaries by low rents, increasing thereby their income without paying additional revenue. But the zemindars whose ryots were thus enticed away suffered, and their loss was great in the degree that too many of them had exacted oppressive rents. Necessarily, many became defaulters, and their zemindaries were sold. This explains a large proportion of the sales for arrears of revenue which occurred after the permanent settlement.

II. When the permanent settlement was proclaimed, the intention to resume invalid rent-free tenures was also declared. Many of these had been created in favour of Brahmins; and on their creation being interdicted, perpetual leases to Brahmins on low rents were, doubtless, substituted from "ignorance or from other causes or motives," as stated in the regulation.

III. Through the permanent limitation of the Government demand, and the gift of waste lands, zemindaries improved in value. Some zemindars, "from improvidence, or with a view to raise money," let parts of their estates at low rents for present payment of a *bonus*, thus selling the unearned increment, as is now done—but only at current rates of rent in the present day.

APP. XVI.

REGULATION
XLIV OF 1793
DID NOT VIOLATE
RYOT'S TITLE.

Para. 43.

43. The recollection of the first two practices, which endangered the permanent settlement, was yet fresh in the minds of the authorities. Thus—

I.—SIR J. SHORE, *Fifth Report (June 1789)*.

Lastly, the detection and resumption of alienated lands, particularly such as are possessed by Brahmins and others, who have obtained them in charity, are operations attended with great difficulty and peculiar embarrassment to the Government and its officers, and such as are not easily surmounted. * * The Mahomedan Government certainly tolerated these alienations, though not perhaps to the extent to which they have now arisen (paras. 118 and 119).

II.—PRESIDENT AND SELECT COMMITTEE (*16th August 1769*).

Colebrooke's
Digest, page 182.

(a). The increase in the number of taluks has been highly impolitic and detrimental to the general prosperity, and to the diffusion of population in the country. The tenants of a taluk are possessed of so many indulgences, and taxed with such evident partiality and tenderness in proportion to the rest, that the taluks generally swarm with inhabitants, whilst other parts are deserted; and, in addition to the natural desire of changing from a worse to the better situation, enticements are frequently employed by the talukdars to augment the concourse to their lands. * *

Ibid., page 183.

(b). As the unequal diffusion of inhabitants has been the cause of this scarcity of cultivation in different parts, every expedient should be used to encourage people to settle on the comar and waste lands, that they may be converted into ryoty. The great towns, whose populousness only serves to propagate poverty and idleness, might undoubtedly afford numbers of useful hands, who in their present situations are either a burthen or a pest to a community. These should be sought out and taught to apply to culture, setting such prospects and expectations in their view as will engage their consent. The taluks and jagirs will likewise be found to contain many idle and unserviceable hands, who may, in like manner, be induced to transplant themselves into these lands, and become farmers.

III.—GOVERNOR-GENERAL IN COUNCIL, REVENUE DEPARTMENT (*31st May 1782*).

Ibid., page 225.

That this practice of alienating lands affects the revenue of Government, is evident, first, by the actual alienation of the rents of lands included in the general rental; and secondly, by lessening the value of the revenue lands. This is effected by withdrawing the ryots from the revenue lands and inducing them to settle on the bazee zemin, which the proprietors can afford to rent to them on easier terms than a farmer or zemindar, who pays an assessment for the lands held by him. The consequences of this practice, if no restraint be imposed, will annually become more important. To this it has been owing that the assets of a district, on forming the hustabood of it, have been found unequal to the revenue demanded by the Government.

IV.—BOARD OF COMMISSIONERS (13th April 1808).

APP. XVI.

(a). Had circumstances, however, appeared to us to admit of the settlement being declared permanent, we should have insisted upon the adoption of a *russud* (progressive) *jumma* in those estates which are capable of great improvement; for otherwise the assessment in a few years would have become altogether unequal. The proprietors of estates containing much uncultivated land would have possessed the means of ruining their neighbours, whose estates were fully assessed, by inducing the ryots to quit such estates, for the purpose of undertaking the cultivation of waste lands at a low rent; and the public revenue would, in consequence, become less secure in particular instances (para. 24).

REGULATION
XLIV OF 1793
DID NOT VIOLATE
RYOT'S TITLE.

Para. 15.

East India
Revenue
Selections,
Vol. I, page 9.

(b). The population being unequal to the entire cultivation of the lands, and the different estates possessing very different capacities, it would follow that the proprietors of estates lightly assessed, *or of estates containing much waste land*, would have the means of drawing away the ryots from estates fully assessed; and the public revenue assessed on the latter might not only become precarious in consequence, but the original injustice of an unequal assessment would be aggravated, to the ruin, perhaps, ultimately, of particular individuals (para. 219).

44. Lord Cornwallis violated the "law and constitution of India," by giving away waste lands to zemindars (Appendix XV). It was soon perceived, however, that the gift endangered the permanent settlement by stimulating zemindars to attract neighbours' ryots to the waste lands on their own estates; but as one wrong generates another, the authorities persevered in the original error, and restrained zemindars from issuing pottahs for more than ten years. Offending zemindars provoked this enactment; but such are the cross-purposes between legislators and lawyers, or such the devil's luck of zemindars, that Sir Barnes Peacock only saw in Regulation XLIV of 1793 that it magnified culprit zemindars and destroyed the rights of the ryots. It did no such thing. (See para. 13, c.)

45. The capital error was mitigated, not corrected, by Regulation IV of 1794, which directed the renewal of the ten years' pottahs at the established rates of the *pergunnah* for lands of the same quality and description. This tinkering in 1794 of regulations of a *permanent* settlement of 1793 was lamentable. No doubt all are liable to err; but a sense of this fallibility should at least prevent a wicked daring presumption, if we had the power, of declaring perpetual any act of our fallible judgment which affects myriads. Is there such sacredness in an error which has doomed millions to misery, that, in defiance of God, who commandeth us to do right, the hasty, erring declaration and acts of a rash presumption, which could not keep in the same mind for even two years, shall remain unalterable for ever?

APP. XVI.

ZEMINDAR'S
STATUS, AS
UNDERSTOOD IN
THE GREAT
RENT CASE.

Para. 46.

46. In the great Rent Case, the *status* of the zemindars under the Regulations of 1793 was discussed by the Full Bench of the High Court. Mr. Justice Trevor's description of that status included, substantially, nearly all that the other judges said on the subject; his description, and certain other features of that status, noticed by some other judges, are as follows:—

Tagore Law
Lectures:
PHILLIPS,
page 312.

I. MR. JUSTICE TREVOR—"Though recognised as actual proprietors of the soil, that is, owners of their estates, still zemindars and others entitled to a settlement were not recognised as being possessed of an absolute estate in their several zemindaries; there are other parties below them with rights and interests in the land requiring protection, just in the same way as the Government above them was declared to have a right and interest in it which it took care to protect by law; that the zemindar enjoys his estate subject to, and limited by, those rights and interests; and that the notion of an absolute estate in land is as alien from the regulation law as it is from the old Hindu and Mahomedan law of the country."

Page 314.

II. MR. JUSTICE CAMPBELL treats it "as clearly established that, by the terms of the permanent settlement, the zemindars were not made absolute and sole owners of the soil, but that there were only transferred to them all the rights of Government, *viz.*, the right to a certain proportion of the produce of every beegah held by the ryots, together with the right to profit by future increase of cultivation and the cultivation of more valuable articles of produce; it being further established that the khoodkasht or resident ryots retained a right of occupancy in the soil, subject only to the right of the zemindars to the certain proportion of the produce represented by the pergunnah or district rates."

III. MR. JUSTICE NORMAN—"These processes appear to me to show that, although the zemindars were by the regulations constituted owners of the land, such ownership was not absolute. The regulations which create a right of property in the zemindars do not recognise any absolute right in them to fix the rents of the land at their own discretion."

IV. MR. JUSTICE PHEAR—"I may say that, in my conception of the matter, the relation between the zemindar's right and the occupancy ryot's right is pretty much the same as that which obtains between the right of ownership of land in England and the servitude or easement which is termed *profit à prendre*; although I need hardly say the ryot's interest is greatly more extensive than a *profit à prendre*. It appears to me that the ryot's is the dominant, and the zemindar's the servient, right. Whatever the ryot has, the zemindar has all the rest which is necessary to complete ownership of the land: the zemindar's right amounts to the complete ownership of the land subject to the occupancy ryot's right; and the right of the village, if any, to the occupation and cultivation of the soil, to whatever extent these rights may in any given case reach. When these rights are ascertained, there must remain to the zemindar all rights and privileges of ownership which are not inconsistent with or obstructive of them. And, amongst other rights, it seems to me clear that he must have such a right as will enable him to keep the

possession of the soil in those persons who are entitled to it, and to prevent it from being invaded by those who are not entitled to it." APP. XVI.

The ryot's being the dominant right, the zemindar's is a limited interest, and the ryot has all the rest—see appendix XVII, para. 9. ZEMINDAR'S STATUS, AS UNDERSTOOD IN THE GREAT RENT CASE. Para. 16, contd.

V. MR. PHILLIPS (summed up on the same side of the question as follows):—

(a). An opinion long prevailed that the Government had given the zemindar the property in the soil, and had rendered the ryot absolutely dependent upon him, except in so far as the ryot was protected by express legislation. On the other hand, some considered that the permanent settlement was not intended to convey such property in the soil, or to interfere with subordinate rights. Page 312.

(b). In the great Rent Case which was decided in 1865, the majority of the judges appear to have held the view that the right of the zemindar was not an absolute right to the soil, as against the subordinate holders; but that in that direction the rights of the zemindar were limited by the rights of those subordinate holders.

(c). And the cases now seem to have decided that a settlement with a person under the Bengal system does not establish in the person settled with a right to the land, if he did not already possess it; but that a settlement is an arrangement made by that person with the Government with respect to the revenue only. This, indeed, appears from the regulations themselves, which, while directing in the regulations for the decennial settlement that the settlement should be with the 'actual proprietors,' recognises that the actual possessor, and the person therefore actually settled with, may not be the proprietor; and that, consequently, the fact of settlement with a person under the regulations does not conclude the question of proprietorship, as between that person and the true proprietor. * *

(d). It is remarked by Sir Henry Maine that the distinction between proprietary rights and rights which are not proprietary is, that the latter have their origin in a contract¹ of some kind with the holder of the former. We have seen that Lord Cornwallis was under the impression that the rights of the ryots might be treated in this way; but the regulations themselves save the rights of the ryots as they actually existed; and it is now the opinion of most authorities on the subject that the actual rights of the ryots were proprietary rights. They were not derived from, or carved out of, an original theoretically complete proprietary right of the zemindar, in the way that all interests in land in England are theoretically derived from, or carved out of, the fee-simple. As, therefore, the term 'actual proprietors' does not mean what might be supposed *prima facie*, but something less, and considering the way in which it is used in a mere enumeration of the persons to be settled with, and unaccompanied by any declaration in the regulations or proceedings relative to the decennial settlement of an intention to confer Page 313.

¹ e. g., zemindars, not being proprietors, derived their rights from a contract with the Government for the land revenue outside the ryots' share of the produce.

Thus, until 1793, the zemindars clearly were not proprietors of the soil; and under the law and constitution of India, which Parliament had enjoined should be observed in settling the rights of all concerned, the State was not the proprietor (Appendix V); it follows that the ryots were proprietors of the land until 1793, and they were so under a custom more ancient than law. It was not within Sir Barnes Peacock's knowledge that, outside Ireland, millions of proprietors, with rights consecrated by ancient custom, were ever disestablished by statute in favour of other proprietors created by statute.

APP. XVI.
—
ZEMINDAR'S
STATUS, AS
UNDERSTOOD IN
THE GREAT
RENT CASE.
—
Para. 47, contd.

II. The State (which was not proprietor of the soil) did, in 1793, declare the zemindars to be proprietors; because it was intended that thereby they would effect improvements in agriculture, and provide against famine by constructing embankments and irrigation works.

If the statutory right of the zemindar was created with this object, then another statute should now annul it; because every improvement in agriculture in Bengal has been effected by ryots and European planters;—the zemindars have done nothing; nor have they done anything to avert famine: on the contrary, over a great part of Bengal and in Behar they keep the ryots on the verge of famine by rack-rents, insomuch that the poverty of the ryots in Behar and Orissa greatly aggravated the pressure in those provinces of the famines in 1866 and 1874. The many millions sterling expended by Government during the famine of 1874 were provided at the expense of the tax-payers in British India.

III. The following passage in the proclamation of the permanent settlement declares the zemindars' title:—"The Governor General in Council trusts that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves in the cultivation of their lands, under the certainty that they will enjoy exclusively the fruits of their own good management and industry, and that no demand will ever be made upon them or their heirs or successors for an augmentation of the public assessment in consequence of the improvement of their respective estates.

The zemindars, as stated by Sir Barnes Peacock, were not proprietors of the land up to 1793; millions of ryots were. The breath of Lord Cornwallis could not unmake these millions, or destroy the custom, more ancient than law, under which they transmitted their rights to their descendants, and under which those descendants were continually acquiring independent rights in the soil by cultivating waste, subject, merely, to payment of the established pergunnah rate, which pergunnah rate of rent was all the property in the waste that the State had assigned to the zemindar (Appendix XV,

APP. XVI. paras. 5 and 7). Moreover, Lord Cornwallis spoke of the good management and industry of his proprietors of mushroom growth in the same breath in which he declared the legal fiction of their status as proprietors. Their good management, as a body, consisted in rack-renting ryots, and forcing on them the sweets of Huftum and Punjum;—their industry, in doing nothing, but letting the ryots do everything. As Lord Cornwallis' substantial reward for ideal qualities of ideal zemindars, the actual zemindars enjoy exclusively, and the ryots not at all, the fruits of the ryots' industry in Behar, and over a great part of Bengal and Orissa; though the faith of the State and of the nation was as solemnly pledged to the ryot as to the zemindar, that he should undisturbedly enjoy his dominant right in the fruits of those labours which, said the authors of the permanent settlement, are the riches of the State, in like manner as their predecessors in the Government only twenty years previously had said that "it ought to be remembered" (not a great effort for the memory of even a weak benevolence) "that the welfare and good of the whole was never intended to be sacrificed to the enriching of a few, perhaps worthless, individuals, who can show no pretence to these peculiar advantages, but a prostitution of their integrity to their avarice."

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ZEMINDAR'S
STATUS, AS
UNDERSTOOD IN
THE GREAT HUNT
CASE.

Para. 17, contd.

IV. The position that "the rights of those ryots, at least, whose tenures commenced since the date of the permanent settlement, depend not upon status but upon contract, and upon the laws and regulations which have been specifically enacted," Sir Barnes Peacock supported as follows:—

(a). Sections 54 and 55 of Regulation VIII of 1793 having stated that the zemindars and ryots should agree in concert respecting the amount of existing rents and *abwabs* which should be entered in a consolidated sum in pottahs which the zemindars were ordered to grant to the ryots, which consolidated sum was not to be augmented thereafter by fresh *abwabs*, the following provisions occur in sections 56, 57, and 60:—

(b).—Section 56 (*quoted in full, in paragraph 12, section a*).

Where it is the established custom to vary the pottahs for lands, according to the produce, all particulars are to be specified; and in the event of the species of produce being changed, *a new engagement shall be executed for the remaining term of the fresh lease, or for a longer term, if agreed on.* Further, it is expected that, *in time*, proprietors and ryots will find it for their mutual advantage to *enter into agreements in every instance* for a specific sum for a certain quantity of land, irrespective of produce.

This simply meant that every time the produce was varied, the ancient established rate for the new produce should

be ascertained in concert, and be entered in a fresh pottah, Art. XVI. and that, in time, zemindar and ryot might possibly agree at their option to strike an average of the ancient established rates for the several kinds of produce, for insertion in a pottah as the rate to be levied irrespectively of the kind of produce. The matter was not one of bargain or contract, for the established pergunnah rate limited the demand and the payment: what section 56 required was that, by arithmetic and other enquiry, the zemindar and ryot should agree respecting the amount that was to be entered in the pottah as the record of what the ryot had to pay in accordance with established custom,

ZEMINDAR'S
STATE, &c.
HABITATION IN
THE GREAT ARREAR
CASE.
Part. II. contd.

APP. XVI. elements of contract, and scope for it, were shut out; the Regulation XLIV of 1793 did not trench upon customary rights of the ryots; it simply provided that the record of what the ryot had to pay, conformably with those rights, should be a valid record for not more than ten years; after that period the rent which he had to pay, in accordance with established rates of the pergunnah, would be entered in a fresh record, thus providing (in an awkward, blundering way as regards the mass of ryots) for the comparatively few ryots, who, in the course of time, would be taking up waste land at low rates, rising progressively to the pergunnah rate. Accordingly, if there was room for the growth among the cultivating class of permanent rights of occupancy at the ancient established rates, independently of Regulation XLIV of 1793, nothing in that regulation interfered with such growth of custom.

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ZEMINDAR'S
STATUS, AS
UNDERSTOOD IN
THE GREAT HUN-
DARS.

—
Para. 17, contd.

48. Sir Barnes Peacock misapprehended the true character of the pottah, and that error vitiated his reasoning. It was a record, as to amount of rent, of rights which the ryots possessed independently of the pottah, and this, its character, even if not otherwise demonstrable (see, however, paras. 3, 4 and 9 sec. III), was evident from the power given to the ryot by the regulations to compel the zemindar, by a civil suit, to issue a pottah in accordance with the established rate of the pergunnah. As the pottah spoken of in the Regulations of 1793 was not a lease in the ordinary English sense, the rights of ryots were not derived through it from the zemindars. As the pottah was constituted by the Deed of the Permanent Settlement, a record of then existent ryot's rights, the rights necessarily existed outside the pottah, and independently of the zemindar.

49. Down to 1793, at any rate, the ryot's right to the land which he cultivated was determined, not by a pottah, but by (1st) the record, in the cutcherry of the village or pergunnah, of the ancient established rate of rent for land in that locality; (2nd) the payment of that rate by the ryot. The Regulations of 1793 recognised this custom by the provision in them for continuing the office of those Putwarries of whom Mr. Roche, Member of the Board of Revenue, wrote in 1815:—

“The Putwarries were, in fact, the depositaries of the local usages of the country, from whom it was always easy for the Revenue Officers of Government to collect correct information regarding the individual rights of the ryots, in cases of disputes between them and the zemindars or

farmers. They were then considered the immediate servants of Government; but now, being dependent on the proprietors of the soil, the nature and intention of their original institution are naturally altered, and instead of being the protectors and guardians of the rights and privileges of the cultivators of the soil, they are become the zealous and interested partisans of the new proprietors. Of course little information can now be derived from that source, calculated to secure the ryots from the gripe of their new masters.

APP. XVI.

ZEMINDAR'S
STATUS, AS
UNDERSTOOD IN
THE GREAT
RENT CASE.

Para. 49, contd.

These two conditions being sufficient, namely, the village record of the ryot's pergunnah rate and his payments at that rate, the resident ryot held without any pottah from the zemindar; and so rooted was this custom in the traditions and feeling of the people, that the British Indian Association testified so late as 1859, that the great body of the ryots held, even in that day, without pottahs.

50. Of the two conditions which, as just stated, determined the ryot's title to the land which he occupied and cultivated, the established local rate of the pergunnah was the dominant or ruling, and, practically, the only real condition. Now (a) that local rate, as we have seen, was only confirmed and perpetuated by the Regulations of 1793 (paragraphs 24 and 25). Accordingly, (b) the charter of the ryot's rights was upheld, not destroyed, by the permanent settlement. We have also seen (paragraphs 36 to 40) that (c) the proprietorship vested in the zemindar was in merely a part of the Government's share of the produce of the soil; and that (d) the residents in a village were not disestablished, by the Regulations of 1793, from their right of cultivating waste lands in their village, subject only to payment of the established pergunnah rate for such lands, inasmuch as property in that rate only, and not in the waste lands, was made over to the zemindars (Appendix XV, paragraph 9). It follows that the ancient custom which had been handed down through centuries, under which hereditary rights of permanent occupancy, subject only to the payment of the established local rate, were being continually created through the cultivation of waste land in each village by its inhabitants, was not interrupted by the Regulations of 1793; but when we arrive at this conclusion, the foundation and the fabric of Sir Barnes Peacock's reasoning are destroyed.

51. Mr. Phillips adds, on the zemindar's side of the question—

Sir Barnes Peacock did not agree with the actual decision in this case, and seems to consider a greater right to belong to the zemindar. And a recent writer (Mr. Justice Phear in the *Calcutta Review* for 1874)

APP. XVI. appears to consider that the zemindars have acquired larger rights than I have attributed to them. He says:—"A very important change was brought about by the legislation of 1793. The legislature then, for the first time, declared that the property in the soil was vested in the zemindars, and that they might alien or burden that property at their pleasure without the previously obtained sanction of Government; and the moment this declaration was made, obviously all subordinate tenures and holdings of whatever sort became also personal proprietary rights in the land, of greater or lesser degree, possessing each within itself also in greater or lesser degree powers of multiplication. When the zemindar's right had become in a certain sense an absolute right to the soil—not exclusive, because the legislature at the same time recognized rights on the side of the ryot—with complete powers of alienation, the rights of all subordinate holders were necessarily derivative therefrom, and enforcement of them immediately fell within the province of the public courts of justice."

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ZEMINDAR'S
STATUS, AS
UNDERSTOOD IN
THE GREAT
RENT CASE.

Para. 51, contd.

52. The fallacies in these assumptions, that the ryot's became a derivative right from the zemindar's under the permanent settlement, and that any greater property in the soil than a portion of the Government's limited share of the produce became vested in the zemindar, have been indicated in the remarks on Sir Barnes Peacock's argument. But the absurd conclusions to which these assumptions lead may be indicated.

I. On 12th August 1765 the East India Company succeeded to the dewany of Bengal, Behar, and Orissa; on 28th August 1771 they "stood forth" as dewan; on 22nd March 1793 the permanent settlement took effect; up to 1765 the zemindars were not proprietors of the soil; millions of cultivators had a right of property in the land. No incidents of the acquisition of the dewany by the Company had entailed on the cultivators a confiscation of rights such as even conquest does not involve; on the contrary, the Company's Government during 1765 to 1793 laboured to assure the ryots of protection from tyranny and wrong; yet it is gravely averred that the legislators of 1793, without compensating the ryots for the destruction of their proprietary rights, swept away the verities which had sustained those rights, and substituted for them, in zemindars misbegotten of Lord Cornwallis' benevolence, John Does and Richard Roes through whom, as so-styled proprietors of the soil, the ryots were to derive their rights in despite (during more than two succeeding generations) of violence, perjury, and fraud, and with such help as the poor creatures could get from Stamp Acts and from the weakness, corruption, and inefficiency, for long, of the police and the civil courts. Great is the power of the law, but never before or since 1793 was it known that the proprietary rights

of millions "obviously" ceased under a mere inference from a declaration (by those who had no power to confiscate) that a comparatively few rapacious officials were by a legal fiction proprietors of the land which was then held by millions of cultivators in right of a custom more ancient than law.

APP. XVI.
ZEMINDAR'S
STATUS, AS
UNDERSTOOD IN
THE GREAT
BENT CASE.

Para. 51, contd.

II. If a breath could thus make the zemindars proprietors without compensating the ryots, a breath can unmake them without compensating the zemindars. The rights of the millions of cultivating proprietors had been hallowed by the prescription of centuries; Lord Cornwallis' zemindars cannot plead the prescription of even a century. The offices in virtue of which they were declared proprietors in 1793 are now held by European officials who represent the rulers of Bengal,—more truly than ever did the zemindars,—in race, religion, education, character, and the feelings and instincts which make the English landed gentry as a class considerate to tenants and merciful to the poor. All the considerations which were put forth as justifying the wisdom and benevolence of Lord Cornwallis' settlement with zemindars, would justify a new proclamation declaring that the European officers of Government are the proprietors of the soil. The Government's word would, indeed, be broken to the zemindars of 1793 and their successors; but surely it was a bigger, blacker, more wicked lie, by far, to dispossess millions of proprietors by falsely proclaiming the zemindars as proprietors of the soil, in the sense in which Mr. Justice Phear understood the declaration, than it would be to now put forth as proprietors, European gentlemen who would leave the substantial fruits of property in larger measure with the cultivators of the soil. Truth, right, and humanity would be better attained thus, by reversing or unsaying the first fiction. We know, however, that these uncouth phrases, this absurd conclusion, are grossly misapplied to any work of the authors of the permanent settlement; and, accordingly, the declaration of Lord Cornwallis, that the zemindars were the proprietors of the soil, was obviously a mere legal fiction, which had a narrower meaning than Mr. Justice Phear attached to it.

53. The Regulations of 1793 show that the property vested in the zemindars was property in the Government's limited share of the produce, and those regulations, together with the minutes of Lord Cornwallis and Sir John Shore, show that the pottah which the ryot was empowered to demand from the zemindar, even by a civil suit, was designed as a record of the ryot's right. It has also appeared fre-

APP. XVI. extracts in this Appendix, that the only rates of rent recognized by the Regulations of 1793 were the ancient established pergunnah rates, and other *reduced* rates. Higher than the pergunnah rates were not countenanced; on the contrary, the levy of fresh *abwabs*, that is, enhancement in the only form in which rents were increased under Native rule from a rise of prices, was strictly prohibited. In fine, as regards rent, the Regulations of 1793 made no provision for any subsequent revision or increase of a ryot's rent, after its entry, once, in a pottah, by mutual consent of the zemindar and ryot; and this was an advised omission, for the regulations only carried out, in this regard, what had been determined upon by the Government since 1769, and by Sir John Shore, Lord Cornwallis, and the Court of Directors, in their discussions of the permanent settlement.

ZEMINDAR'S
STATUS, AS
UNDERSTOOD IN
THE GREAT
RENT CASE.

Para. 53, contd.

54. It further appears that the custom, more ancient than law, under which the residents in a village acquired permanent occupancy right in waste land by bringing it under cultivation, subject to payment of the established pergunnah rate, was not abrogated, or put an end to, by the permanent settlement, inasmuch as the zemindar was debarred from charging more than the ancient pergunnah rate for any land in his zemindary; at the same time that he was bound to give a pottah at that rate to any resident cultivator who demanded it. Even pykasht or stranger ryots were protected so far that, if allowed to cultivate, no more than the pergunnah rate could be demanded from them, and on the expiration of the temporary lease they were entitled to renewal at the pergunnah rate.

55. Lord Cornwallis was familiar with the English copyhold tenure, according to which the tenant pays, like the khoodkasht ryot, a rent fixed by immemorial custom, and not liable to increase, while the only record of it, as with the khoodkasht ryot of 1793, was in the court roll of the minor, a copy of which, corresponding to the pottah deliverable to the khoodkasht ryot, constituted, to the copyholder, the sole record of his title. The analogy between the copyholder and the khoodkasht ryot fails so far that the zemindar was not the proprietor;—but in Lord Cornwallis's estimation he was, and from his Lordship's point of view the analogy was perfect; whence we are warranted in concluding, in confirmation of the view in this Appendix, *1stly*, that the pottah was designed as a mere record of a right which the ryot did not derive from the pottah; *2ndly*, that the rent specified in the pottah was not liable to increase.

The
Zemindary Settlement
of Bengal.

IN TWO VOLUMES.

VOLUME II.

CALCUTTA:
BROWN AND COMPANY,
BOOKSELLERS BY SPECIAL APPOINTMENT TO GOVERNMENT.

MDCCCLXXIX.

INTRODUCTION.

THE first four papers in this volume relate to the enhancement of rent in Bengal. Perhaps they establish the position that Lord Cornwallis intended, and the Regulations of 1793 prescribed—the same permanent settlement for the ryot as for the zemindar. The fifth paper, however, shows the failure of the settlement in this respect. The rent question in Bengal, in the present day, is seemingly insoluble; but if we hold firmly to the fact that by the permanent settlement of 1793 the ryot was to pay no higher rent than the per-gunnah rate, *plus* abwabs, of that year, a solution ought to be found by intelligently studying examples in Europe, of which there is no lack.

With this purpose, eight papers relating to land tenures in the West have been introduced into this volume. They show that the curse of middlemen, which impoverishes Bengal, does not exist in Continental Europe, and that it has also practically ceased in Ireland; also that, wherever, on the Continent, the cultivators of land are prosperous, they are proprietors of small farms, or are subject only to a fixed rent. It will be difficult, after reading of what has been done in Europe, to say why the ryots in Bengal should not, in the present day, have the same security against surrender to others of increased earnings from the lands they cultivate, as is enjoyed by the cultivating class on the Continent of Europe, and as was designed for them in the permanent settlement.

The papers relating to land tenures in the West may be divided into those which afford an encouraging example, and others which convey a warning, to the Indian Government.

The examples occur on the Continent of Europe ; the warnings, in England and Ireland. Cottierism is the Irish difficulty, and the aim of many zemindars and almost all middlemen in Bengal is to reduce the ryots to cottierism. Lord Cornwallis hoped much from great zemindars ; but we find that in England, in the present day, the system of great zemindars has brought about a social condition which is fraught with political danger.

On the other hand, when we turn to the Continent, we find that Russia, Germany, Austria, have liberated the cultivators of the soil during the present century, and that France—the country, especially, of peasant-proprietors—has suffered least, among European countries, from the general depression of trade, while she suffers least, among all countries, from commercial crises.

A survey of the condition of the agricultural classes in Europe shows that the most conservative force that has worked during the present century is the French revolution, which spread peasant proprietorship over Continental States ; while a condition of society, charged with the elements of revolution, and of a war of class against class, is being brought about in England by the system of large estates.

The application of European examples to the relations between zemindar and ryot in Bengal is not hard to seek, with the full information presented in this volume.

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APPENDIX XVII.

PRINCIPLES OF REAL PROPERTY RIGHTS AND OF PRESCRIPTION.

1. In encountering the intricacies of the subject of occupancy right, we should grasp the principles of rights in real property, and of prescription. Our first extracts will be from Mr. John Austin's Lectures on Jurisprudence.

APP.
XVII.

I.—COMMON NATURE OF RIGHTS.

(a). Every right is a right *in rem* or a right *in personam*.

(b). The essentials of a right *in rem* are these:—it resides in a determinate person or in determinate persons, and avails against *other* persons *universally* or *generally*. Further, the duty (on the part of other persons) with which it correlates, or to which it corresponds, is *negative*, that is to say, a duty to forbear or abstain. Consequently, all rights *in rem* reside in determinate persons, and are rights to *forbearances* on the part of the persons generally.

Vol. II,
pages 57-8.

(c). The essentials of a right *in personam* are these:—it resides in a determinate person or in determinate persons, and avails against a person or persons certain or determinate. Further, the obligation (on the part of some other determinate person or persons) with which it correlates, or to which it corresponds, is negative or positive; that is to say, an obligation to forbear or abstain, or an obligation to do or perform. Consequently, all rights *in personam* reside in determinate persons, and are rights to *forbearances* or *acts* on the part of determinate persons.

(d). It follows from this analysis, first, that all rights reside in *determinate* persons; secondly, that all rights correspond to duties or obligations incumbent upon *other* persons, that is to say, upon persons distinct from those in whom the rights reside; thirdly, that all rights are rights to *forbearances* or *acts* on the part of the persons who are bound.

II.—JUS IN REM, JUS IN PERSONAM, CONTRASTED.

(a). The terms "*jus in rem*" and "*jus in personam*" were devised by civilians of the middle ages, or arose in times still more recent. * * The phrase "*in rem*" denotes the *compass*, and not the *subject*, of the right. It denotes that the right in question avails against persons generally, and not that the right in question is a right over a *thing*. * * The phrase "*in personam*" is an elliptical or abridged expression for "*in personam certam sive determinatam*." Like the phrase *in rem*, it denotes the *compass* of the right. It denotes that the right avails exclusively against a *determi-*

APP.
XVII.COMMON NATURAL
OF RIGHTS.

Para. 1, contd.

Vol. I, pages xxiv
& xxv.Duties corresponding to
rights, and in-
cumbent on
other than the
person or per-
sons on whom
the right
resides.Duties con-
tinued.

nate person (*i.e.*, a person determined specifically), or against *determinate* persons.

(b). Though every right resides in a person or persons determinate, a right may avail against a person or persons determinate, as *in personam*, or against the world at large (as *in rem*). Duties answering to rights which avail against the world at large (*i.e.*, rights *in rem*) are negative; that is to say, duties to *forbear*. Of duties answering to rights which avail against persons determinate (*i.e.*, rights *in personam*), some are negative, but others and most are *positive*, that is to say, duties to *do* or *perform*.

(c). The relative duties answering to rights *in rem* might be distinguished conveniently from duties of the opposite class, by the appropriate name of *offices*; the relative duties answering to rights *in personam* by the appropriate name of *obligations*.

Note.—In the writings of the Roman lawyers, the term *obligatio* is never applied to a duty which answers to a right *in rem*. But since they have no name appropriate to a right *in personam*, they use the term *obligatio* to denote a right of the class, as well as to denote the duty which the right implies. *Jus in rem* or *jura in rem*, they style *dominium* or *dominia* (with the larger meaning of the term); and to *dominia* (with that more extensive meaning) they oppose *jura in personam*, by the name of *obligationes*.

(d). To exemplify the leading distinctions which I have stated in general expressions, I advert to the right of property or ownership, and to rights arising from contracts. The proprietor or owner of a given subject has a right *in rem*, since the relative duty answering to his right is a duty incumbent upon persons *generally and indeterminately* to forbear from all such acts as would hinder his dealing with the subject agreeably to the lawful purposes for which his right exists. But if I singly, or I and you jointly, be obliged, by bond or covenant, to pay a sum of money, or not to exercise a calling within conventional limits, the right of the obligee or covenantee is a right *in personam*; the relative duty answering to his right being an obligation to do or to forbear, which lies exclusively on a person or persons *determinate*.

III.—RIGHTS AND DUTIES.

Ibid., page 59.

(a). The *objects* of duties are acts and forbearances, or (changing the expression) every party upon whom a duty is incumbent is bound to do or to forbear. Or (changing the expression again) the party violates the duty which is incumbent upon him by *not* doing some act which he is commanded to do, or by doing some act from which he is commanded to abstain. * * The acts or forbearances to which the obliged are bound, I style the *objects* of duties.

Page 30.

(b). The objects of *relative duties*, or of duties which answer to rights, may also be styled the *objects* of the *rights* in which those duties are implied. In other words, all rights reside in persons, and are rights to acts or forbearances on the part of *other* persons.

Ibid., page 59.

(c). Duty is the basis of right; that is to say, parties who have rights, or parties who are invested with rights, have rights to acts or forbearances enjoined by the sovereign upon other parties. Or (in other words) parties invested with rights *are* invested with rights, because other parties are bound by the command of the sovereign to do or perform acts, or to forbear or abstain from acts.

(d). In short, the term "right" and the term "*relative duty*" signify the same notion, considered from different aspects. Every right supposes distinct parties. A party commanded by the sovereign to do or to forbear, and a party *towards* whom he is commanded to do or to forbear, * * the person or persons to whom the command is directed, are said to be *obliged*, or to lie under a *duty*. The party *towards* whom the duty is to be observed, is said to have a *right*, or to be invested with a right.

APP.
XVII.

RIGHTS in *personam* AND
RIGHTS in *rem*.

Para. 2.

Ibid., pages
59-61.

IV. Besides the foregoing—

(a). Acts, forbearances, and omissions which are violatory of rights or duties, are styled *delicts*, *injuries*, or *offences*. Vol. I, page
xxxii.

(b). Rights and duties which are consequences of delicts are *sanctioning* (or preventive) and remedial (or reparative). In other words, the ends or purposes for which they are conferred and imposed are two:—*first*, to prevent violations of rights and duties which are *not* consequences of delicts; *secondly*, to cure the evils, or repair the mischiefs which such violations engender.

(c). Rights and duties *not* arising from delicts may be distinguished from rights and duties which are consequences of delicts, by the name of *primary* (or principal). Rights and duties arising from delicts may be distinguished from rights and duties which are *not* consequences of delicts, by the name of *sanctioning* (or secondary).

(d). *Sanctioning* rights (all of which are rights *in personam*), *sanctioning* duties (some of which are relative, but others of which are absolute),¹ together with *delicts* or *injuries* (which are causes or antecedents of sanctioning rights and duties), are the subjects of the second of the capital departments under which I arrange or distribute the matter of the law of things. Page xxvi.

2. Coming to a nearer view of rights *in personam* and rights *in rem*, we find—

I.—IN PERSONAM.

(a). Rights *in personam* as existing *per se* (or as not combined with rights *in rem*), including the obligations which answer to rights *in personam*, arise from facts or events of three distinct natures—*viz.*, from *contracts*, from *quasi-contracts*, and from *delicts*. *Ibid.*, page
xxxiii.

(b). The only rights *in personam* which belong to this sub-department are such as arise from contracts and quasi-contracts. Such as arise from delicts belong to the second of the capital departments (para. 1, IV, d) under which I arrange or distribute the matter of the law of things.

II.—IN REM.

(a). The expression *in rem*, when annexed to the term right, does not denote that the right in question is a *right over a thing*. Instead of indicating the nature of the subject, it points at the compass of the correlating duty. It denotes that the relative duty lies upon persons generally, and is not exclusively incumbent upon a person or persons *Ibid.*, page
xxxiii.

¹ i.e., there is no determinate party whom a breach of the duty would injure, or to whom or in respect of whom the duty is to be observed.

APP.
XVII.

RIGHTS *in personam* AND
RIGHTS *in rem*.
Para. 2, contd.

determinate. In other words, it denotes that the right in question *avails against the world at large*.

(b). Accordingly, some rights *in rem* are rights over *things*; others are rights over *persons*; whilst others have *no* subjects (persons or things) over or to which we can say they exist, or in which we can say they inhere. For example, property in a house, property in a quantity of corn, or property in or a right of way through a field, is a right *in rem* over or to a *thing*, a right *in rem* inhering in a *thing*, or a right *in rem* whereof the subject is a *thing*. The right of the master against third parties to his slave, servant, or apprentice, is a right *in rem* over or to a *person*. It is a right residing in one person, and inhering in another person as its subject. The right styled a monopoly is a right *in rem* which has *no* subject. There is no specific subject (person or thing) over or to which the right exists, or in which the right inheres. The *officium* or common duty to which the right corresponds is a duty lying on the world at large to forbear from selling commodities of a given description or class; but it is not a duty lying on the world at large to forbear from acts regarding determinately a specifically determined subject.

(c). I shall therefore distinguish rights *in rem* (their answering relative duties being implied) with reference to differences between their *subjects*, or between the aspects of the forbearances which may be styled their *objects*. As distinguished with reference to those differences, they will fall (as I have intimated already) into three classes:—

(1). Rights *in rem* of which the subjects are things, or of which the objects are such forbearances as regard determinately specifically determined things.

(2). Rights *in rem* of which the subjects are persons, or of which the objects are such forbearances as regard determinately specifically determined persons.

(3). Rights *in rem* without specific subjects, or of which the objects are such forbearances as have no specific regard to specific things or persons.

3. The essential difference, which these extracts indicate, between rights *in personam* and rights *in rem*, is that the former inhere chiefly in contracts, the latter are altogether¹ outside contracts. The rights of property in land possessed by village communities, or which remained with the members of disintegrated village communities, were outside contracts, that is, they were rights *in rem*; the zemindar's right, on the other hand, is a servitude derived from a contract. Having noted this material difference, further extracts will be confined to an exposition of rights *in rem*:—

Vol. I, page xxx.

I. By different rights *in rem* over things or persons (para. 2 section II c), the different persons in whom they respectively reside are empowered to derive from their respective subjects different quantities of uses or services. Or (changing the expression) the different persons

¹ Leases are classed by Mr. Austin among rights *in rem*; but they are such in respect only of forbearances due by the world at large to the ownership of the land, which is the subject of the lease; in other respects they are the same as any other contract with determinate persons.

in whom they respectively reside are empowered to use or deal with their respective subjects in different degrees or to different extents. Or (changing the expression again) the different persons in whom they respectively reside are empowered to turn or apply their respective subjects to ends or purposes more or less numerous. And such differences obtain between such rights, independently of differences between their respective durations, or the respective quantities of time during which they are calculated to last.

APP.
XVII.

RIGHTS *in rem*.
Para. 3, contd.

II. Of such differences between such rights, the principal or leading one is this:—

Vol. I, page
xxx.

(a). (1). By virtue of some of such rights, the entitled persons, or the persons in whom they reside, may use or deal with the subjects of the rights to an extent which is incapable of exact circumscription, although it is not unlimited.

Ibid., page xxx.

(2). Or (changing the expression) the entitled persons may apply the subjects to purposes the number and classes of which cannot be defined precisely, although such purposes are not unrestricted.

(3). For example: The proprietor or owner is empowered to turn or apply the subject of his property or ownership to uses or purposes which are not absolutely unlimited, but which are incapable of exact circumscription with regard to class or number. The right of the owner, in respect of the purposes to which he may turn the subject, is only limited, generally and vaguely, by the rights of all other persons, and by all the duties (absolute¹ as well as relative) incumbent on himself. He may not use his own so that he injure another, or so that he violate a duty (relative or absolute) to which he himself is subject. But he may turn or apply his own to every use or purpose which is not inconsistent with that general and vague restriction.

(b). (1). By virtue of other of such² rights, the entitled persons, or the persons in whom they reside, may merely use or deal with their subjects to an extent exactly circumscribed (at least in one direction). Or (changing the expression) they may merely turn them to purposes defined in respect of number, or at least in respect of class.

Ibid., page xxxi.

(2). For example: He who has a right of way through land owned by another may merely turn the land to purposes of a certain class, or to purposes of determined classes. He may cross it in the fashions settled by the grant or prescription; but those are the only purposes to which he may turn it lawfully.

III. (a). A right belonging to the first-mentioned kind (II a) may be styled *dominion*, *property*, or *ownership*, with the sense wherein *dominion* is opposed to *servitus* or *easement*. As contradistinguished to a right of the first-mentioned kind (IIa), a right belonging to the last-mentioned kind (IIb) may be noted by one or other of the last-mentioned names, viz., *servitus* or *easement*.

(b). *Dominion*, *property*, or *ownership*, is a name liable to objection for—

1st.—It may import that the right in question is a right of unmeasured duration, as well as indicate the indefinite extent of the purposes to which the entitled person may turn the subject.

See note to para. 1, section IVd.

² See commencing line of this section (II).

APP.
XVII.RIGHTS *in rem*.

Para. 3, contd.

2ndly.—It often signifies *property*, with the meaning wherein *property* is distinguished from the *right of possession*, to which I shall advert below.

3rdly.—*Dominion*, with one of its meanings, is exactly co-extensive with *jus in rem*, and applies to every right which is not *jus in personam*. For various reasons, which I shall produce in my lectures, a right belonging to the last-mentioned kind is not denoted adequately by the *servitus* of the Roman or by the “easement” of the English law.

(c). But in spite of the numerous ambiguities which encumber these several terms, I think them less incommodious than the newly devised names, by which it were possible to distinguish the rights of the two kinds (IIa and IIb).

Rights *in rem*
or Dominion and
servitus.

4. Mr. Austin laid out his subject of rights *in rem* in great detail; a portion of the detail is extracted as follows:—

Vols. I—XXXII
and XXXIII.

I. I shall consider in a general manner such distinctions between rights *in rem* as are founded on differences between the degrees wherein the entitled persons may use or deal with the subjects: particularly that leading distinction of the kind which may be marked with the opposed expressions *dominium et servitus*, or *ownership and easement*; understanding the expression *dominion* or *ownership* as indicating merely the indefinite extent of the purposes to which the entitled person may turn the subject of the right.

II. I shall consider the various *modes* of dominion or ownership, and the various *classes* of servitudes or easements.

III. Although they are incapable of exact circumscription, the purposes to which the owner may turn the subject of his ownership are not exempt from restrictions. The oblique manner wherein the restrictions are set, I shall attempt to explain.

IV. Rights *in rem* are rights of unlimited or rights of limited duration. Every right of unlimited duration is also a right of unmeasured duration, that is to say, a right of which the duration is not exactly defined. But of rights of limited duration some are rights of unmeasured duration, whilst others are rights of duration exactly defined or measured. For example: An estate in fee simple, or property in a personal chattel, is a right of unlimited, and therefore of unmeasured duration. An estate for life is a right of unmeasured but limited duration. The interest created by a lease for a given number of years is a right of a duration limited and measured. Accordingly, I shall distinguish rights of unlimited from rights of limited duration; and I shall distinguish rights of limited into rights of unmeasured and rights of measured duration.

Other defini-
tions.

5. Certain other definitions by Mr. Austin may be noted:—

I.—ABSOLUTE PROPERTY.

Vol. III, page 43.

(a). A right of unlimited duration (as I understand the expression) is not of necessity alienable by the party actually bearing it from the possible series of successors *ab intestato*. For example: According to the older English law, the tenant in fee simple could not alien (even with

the consent of his feudal superior) without the consent of the party who was then his apparent or presumptive heir. And until tenants-in-tail were able to alien from the heirs-in-tail by fine or recovery, the estate tail was not alienable from any of the series of possible successors on whom by the creator of the estate it was destined to devolve.

(b). Absolute property is always accompanied with a power of aliening from the future successors *ab intestato*. But property of unlimited duration (as an estate in fee simple or an estate-in-tail) is not of necessity absolute.

(c). The idea of absolute property, or of property pre-eminently so called, is a right indefinite in power of user, unlimited in power of duration, and alienable by the actual owner from every successor who in default of alienation by him might take the subject.

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XVII.

OTHER DEFINITIONS.

Para. 5, contd.

Ibid., page 50.

II.—ESTATE FOR LIFE.

Where a right of unlimited duration is not alienable from the future successors *ab intestato*, the right of the party actually entitled is in effect an estate for life. Vol. III, page 49.

III.—PROPERTY (as opposed to SERVITUS or EASEMENT).

(a). By this term I mean any right which gives to the entitled party an indefinite power or liberty of using or disposing of the subject: or (in other words) which gives to the entitled party such a power or liberty of using or disposing of the subject as is not capable of exact circumscription; as is merely limited generally by the rights of all other persons, and by the duties (relative or absolute) incumbent on himself. *Ibid.*, page 2.

(b). An estate in fee simple in land, absolute property in a personal chattel, or an estate or interest for life or years in land or a personal chattel, are all of them cases of *property* or *dominion* (taking the expression in the sense which I am now giving to it). * * The party may apply the subject to any purpose or use which does not amount to a violation of any right in another, or to a breach of any duty lying on himself. And it is only in that negative manner that the purposes to which he may apply it can be determined.

IV.—SERVITUS or EASEMENT (as opposed to PROPERTY or DOMINION).

By this I mean any right which gives to the entitled party such a power of liberty of using or disposing of the subject as is defined or circumscribed exactly.

(a). A right of way through land belonging to another, a right of common (or of feeding one's cattle on land belonging to another), or a right to tithe (or to a definite share in the produce of land belonging to another); are all of them cases of *servitus* or *easement* (as I now understand the expression). * * The party may apply the subject to purposes, or may derive from it user, which are not only limited generally by the duties incumbent upon him, but which are determined (or capable of determination) by a positive and complete description. *Ibid.*, page 3.

APP.
XVII.

OTHER DEFINITIONS.

PARA. 5, contd.

Ibid., page 3.

V.—PROPERTY and SERVITUS.

In a word, *servitus* or easement gives to the entitled party a power or liberty of applying the subject to *exactly determined purposes*. Property or *dominion* gives to the entitled party the power or liberty of applying it to *all* purposes, *save* such purposes as are not consistent with his relative or absolute duties.

VI.—POWER OF USER.

Ibid., page 6.

(a). Even the right of property pre-eminently so called (or the right of property whose duration is unlimited) is not unlimited in respect of the power of user which resides in the proprietor. The right of user (with the corresponding right of excluding others from user) is restricted to such a user as shall be consistent with the rights of others generally, and with the duties incumbent on the owner.

(b). For example: if I am the absolute owner of my house, I may destroy it if I will. But I must not destroy it in such a manner as would amount to an injury to any of my neighbours. If, for example, I live in a town, I may not destroy my house by fire, or blow it up by gunpowder.

(c). And the power of user which is implied by the right of property, may also be limited by duties which are incumbent on the owner specially or accidentally.

(1). For example: the power of user may be restricted by duties or incapacities which attach upon the owner in consequence of his occupying some status or condition. We may conceive, for example, that an infant proprietor is restricted (by reason of his infancy) in respect of the power of using as well as the power of aliening.

(2). Or the power of user may be restricted by reason of a concurrent right of property residing in another over the same subject (*condominium, meteligentium*, joint-property, or property in common).

(3). Or the power of user may be restricted by a right of servitude residing concurrently over the same subject in another person. For example: I have (speaking generally) a right of excluding others from my own field; but I have not a right of excluding you (exercising your servitude or easement), if you have a right of way (by grant or prescription) over the subject of my right of property.¹ I have (speaking generally) a right to the produce of the field; but that right is limited by a right in the person² to a tithe, unless my land be tithe-free.³

Ibid., page 7.

(d). It follows from what has preceded that neither that right of property which imports the largest power of user, nor any of the rights of property which are modes or modification of that, can be defined exactly. For property or dominion, *ex vi termini*, is *jus in rem*, importing an indefinite power of user, *i. e.*, such a power of using or dealing with the subject as is limited by nothing but the duties incumbent on the owner; or a power of applying the subject to any purpose whatever which does not conflict with any duty to which the owner is subject.

¹ Ryot.² Zemindar.³ Rent-free.

(c). This indefiniteness is of the very essence of the right, and implies that the right (in so far as concerns the power of user) cannot be determined by exact and positive circumscription. Such an application of the subject as consists with every of his duties, the owner has a right to make. And any act by another, preventing or hindering any application of the kind, is an offence against his right. The definition, therefore, of the right lies throughout the *corpus juris*, and imports a definition of every right or duty which the *corpus juris* contains.

App.
A VII.

PROPERTY
PART. II.

6. Before developing the several classes of *servitus*, it may be convenient to exhibit *servitus* in its place among *rights in re alienā*:—

I. Every *jus in re alienā* is a fraction or particle (residing in one party) of dominion, strictly so-called, residing in another determinate party.

II. But *jura in alienā* have no other common property than that which I have now stated. Different rights of the class are composed of different fractions of that right of absolute property from which they are respectively detached. Some are mainly definite subtractions from the right of user and exclusion residing in the owner; others are indefinite subtractions from his power of user and exclusion for a limited time; and so on.

III. The *jura in alienā* which commonly are marked by modern expositors of the Roman law are *servitus*, *emphyteusis*, *ager vectigalis*, and the *jus in rem* which is taken by a creditor under a pledge or mortgage. And to show the nature of the distinction between the *jura in re propria* and *jus in re alienā*, I will briefly advert to each of the first in the order in which I have stated them:—

1. *Servitus*.

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XVII.

—
SERVITUS.

Para. 8, contd.

Where an estate in fee-simple of free-hold tenure is subject to a quit rent, there would seem to be a *servitus* in the lord, as lord of the fee. So in case of copyhold. So in case of *emphyteusis*. Or perhaps an obligation *quasi ex contractu*. Or a *servitus* and an obligation combined.

(c).—*Superficies*.

Vol. III, page 65.

Superficies is clearly not a *servitus*. And inasmuch as it exists concurrently with another right of property over the same subject, it would seem to fall under the section of *condominium* (i.e., joint property, or property in common), rather than property which is *jus in re alienâ*, i.e., which is carved out of property in another, and is to revert to the grantor. * * An improper servitude, like superficies, gives a right of indefinite user, and may be a right of unlimited duration.

7. In the course of the following extracts, which develop the classes of *servitus*, it will be observed that the zemindar's right in Bengal is *servitus*, and not *dominium* :—

Servitus—

Vol. II, page 36.

I. *Servitus* (for which the English "easement" is hardly an adequate expression) is a right to *use or deal with*, in a *given and definite manner*, a subject *owned* by another. Take, for instance, a right of way over another's land. Now, according to this definition, the capital difference between *ownership* and *servitus* is the following: The right of dealing with the subject which resides in the owner or proprietor, is larger, and, indeed, *indefinite*. That which resides in the party who is invested with a right of servitude is narrower and *determinate*. But in respect of that great distinction which I am now endeavouring to illustrate, the Right of Ownership or Property, and a Right of Servitude, are perfectly equivalent rights. *Servitude* (like ownership) is a *real right*. For it avails against *all mankind* (including the owner of the subject). Or (changing the expression) it implies an obligation upon *all* (the owner again included) to *forbear* from every act inconsistent with the exercise of the right.

Vol. III, page 13.

II. (a). Speaking generally, the subject of a right of servitude is also at the same time the subject of property residing in another or others. For example: if I have a right of way over a field, while the field is yours solely, or is yours jointly or in common with others, &c., &c. For this reason rights of servitude are styled by the Roman lawyers *jura in re alienâ*; that is to say, rights over subjects of which the property or dominion resides in another or others. * *

(b). For the same reason, a right of servitude is styled by Mr. Bentham a *fractional right*; that is to say, a definite right of user, subtracted or broken off from the indefinite right of user which resides in him or them who bear the dominion of the subject.

Ibid., page 14.

(c). For the same reason a right of servitude is styled by Von Savigny (in his matchless treatise on the Right of Possession) a single or particular *exception* (accruing to the benefit of the party in whom the right resides) from the power of user and exclusion which resides in the owner of the thing.

Page 14.

(d). For the same reason, rights of servitude are styled by French writers "*denembrements du droit de propriété*" that is to say, detached

¹ Similarly, a *servitus* in the zemindar, upon rent, only from the ryot.

bits or fractions of the indefinite right of user which resides in him and his heirs, and is to be enjoyed by them who own the subject of the servitude.

(e). But (as I shall show at the close of my lecture) we may conceive a right of servitude existing over a thing which, speaking with precision, has no ¹ owner. We may conceive, for example, that the sovereign or State reserves to itself a portion of the national territory, but that it grants to one of its subjects, over a portion of the territory so reserved, a right ² which quadrates exactly with the notion of a right of servitude; that is to say, a right to use or apply the subject in a definite manner. Now, in the case imagined, there is not, properly speaking, any right of property in the thing which is subjected to servitude; for it is only by analogy that we can ascribe to the sovereign a legal right. Strictly speaking, the party has a right of servitude over a thing, the indefinite power of using which the sovereign or State reserves to himself.

[. a determinate parcel of land,¹ or as being the owner or other occupant of a determinate building with the land whereon it is erected. And it is * a right against every owner or occupant of another² parcel of land or building to a power of using the latter in some definite mode, or to a forbearance (on the part of the owner or occupant of the latter) from using the latter in some definite mode.

or.
intd.

(b). A real servitude, therefore, supposes the existence of two distinct parcels of land, to each of which it relates. For it is a right in a given person, as being the owner or occupant of a determinate parcel of land against another given person, as being the owner or occupant of another determinate parcel of land. I use the term 'land' as including land merely, or as including land with a building erected upon it. And hence it follows that a real right of servitude is said to be annexed to the parcel of land the owner or occupant whereof hath the right of servitude. Or, in the language of the English law, it is said to be *appurtenant* to the land or messuage the owner or occupier whereof hath the right of easement, the meaning of which expressions is merely this—that the right resides in the owner or occupant, and passes successively to every such owner or occupant for the time being, from every owner or occupant immediately preceding.

(c). And hence it also follows that a real servitude (as meaning the *onus* or duty, and not the *jus servitutis*) is said to be due to one of the two parcels of land from the other; that is to say, the duty is enforced upon every owner or occupant of the one (as being such owner or occupant) for the use or advantage of every owner or occupant of the other (as being such owner or occupant). Or the duty is due from every owner or occupant of the one (as being such owner or occupant) to every owner or occupant of the other (as being such owner or occupant).

(d). And hence we may derive the origin of the metaphorical expressions, by which, in the language of the Roman law, the two parcels of land (or the two *prædia*) are contradistinguished.

(e). I have remarked above that, in every case of a right of servitude, the thing which is the subject of the right, and not the owner or other possessor of the thing, is said to be burthened with the servitude (considered as an *onus* or duty), '*res servit*,' or '*res, non-persona, servit*'; meaning that the right of servitude avails against every person whomsoever, who may happen, for the time being, to have property in the thing, or, as adverse possessor, to exercise a right of dominion over it.

(f). To borrow the technical language of the English law, *real* servitudes are appurtenant to *lands* or *messuages*. *Personal* servitudes are servitudes *in gross*, or are annexed to the persons of the parties in whom they reside. Every *real* servitude (like every imaginable right) resides in a *person* or *persons*. But since it resides in the person as occupier of the given *prædium*, and devolves upon every person who successively occupies the same, the right is ascribed (by a natural and convenient *ellipsis*) to the *prædium* itself. Vesting in every person who happens to occupy the *prædium*, and vesting in every occupier *as* the occupier thereof, the right is spoken of as if it resided in the *prædium*, and

¹ The manorial or neej lands of the zemindar.

² Ryot's land.

as if it existed for the advantage of that senseless or inanimate subject. The prædium is erected into a legal or fictitious *person*, and is styled '*prædium dominans*.' On the other hand, the prædium against whose occupiers the right is enjoyed or exercised, is spoken of (by a like *ellipsis*) as if it were subject to a duty. The duty attaching upon the successive occupiers of the prædium is ascribed to the prædium itself; which, like the related prædium, is erected into a *person*, and contradistinguished from the other by the name of '*prædium servitus*.'

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—
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IN LAND.
—
Para. 10.

(g). A *real* servitude resides in a given person as the owner or occupier, for the time being, of a given prædium. A personal servitude (or a personal right of servitude) resides in a given or determinate person, *not* as being the owner or occupier of a given parcel of land or prædium.

IV. Tithe is a *servitus* combined with an obligation (s. s.) on the occupant. A right to a part of the produce of the subject *adversus quencunque*, with an obligation on the actual occupant to set out, &c. Vol. III, page 67.

N.B.—The zemindar's allowance out of the Government's share of the produce of the soil was of precisely the same nature as tithe; that is, it was *servitus*; and it is curious that the proportion of that remuneration was also a tithe.

9. *Servitus*, we have seen, is *jus in alienâ*; and we may conclude this notice of *servitus* with the following extracts:—

I. Every *jus in re alienâ* is a fraction or particle (residing in one party) of dominion, strictly so called, residing in another determinate party. Vol. I., page 63.

II. A servitude over land of which another is the owner, is '*jus in re (alienâ)*'; but the right or interest of the owner is '*dominium*,' '*proprietas*,' or '*in re potestas*.' Vol. I., page 102.

Thus the ryot's ownership of his holding is the dominant, the zemindar's *servitus* on the holding for rent is the subordinate, right. It is the essence of a proprietary right that it is indefinite in power of user; whereas the right which the Government conferred on the zemindar was precisely defined: his *servitus* was strictly limited to the ancient customary rate of rent, and that rate, throughout Bengal, was a money rate, which zemindars were required, as a condition of the Government's covenant with them, to enter in the pottahs which it was made their duty to grant to the ryots.

10. Mr. Austin, in his classification of rights, found no place for the State's right in land. He observed:—

I. It is manifest that the State (or sovereign Government) is not restrained by positive law from dealing with all things within its territory at its own pleasure or discretion. If it were, it would not be a sovereign Government, but a Government in a state of subjection to a Government truly supreme.

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XVII.STATE'S RIGHT
IN LAND.

Para. 10, contd.

II. Now, since it is not restrained by positive law from dealing at its own pleasure with all things within its territory, we may say (for the sake of brevity, and because established language furnishes us with no better expressions) that the State has a *right* to all things within its territory, or is absolutely or without restriction the *proprietor* or *dominus* thereof.

III. Strictly speaking, it has no *legal right* to any thing, or is not the legal owner or proprietor of any thing; for, if it were, its own subjects would be subject to a sovereign conferring its legal ownership upon it. When, therefore, I say that it has a right to all things within its territory (or is the absolute owner of all things within its territory), I merely mean that it is not restrained by positive law from using or dealing with them as it may please.

In India, as in other countries, the institutions of which have preserved the clearest traces of the origin of property in land, the State was not the proprietor of the soil; its right was restricted to a definite portion of the produce; even in respect of waste land brought into cultivation. This land tax, or limited share of Government in the produce, was a *servitus* upon the land of the cultivator, who, by its reclamation from waste, became the actual proprietor. In India, the Government of Lord Cornwallis transferred to the zemindars this *servitus*, less the amount which was settled with the Government on each zemindary as its permanent assessment.

11. Mr. Austin's account of the functions of titles explains with singular felicitousness the need of the legal fiction by which zemindars, when vested by Government with the right of *servitus*, were declared to be proprietors of the soil. He defined titles and their functions as follows:—

I. (a). Rights may be divided into two kinds:—

(1). Some are conferred by law, upon the persons invested with them, through intervening facts to which it annexes them as consequences.

(2). Others are conferred by the law, upon the persons invested with them, immediately or directly; that is to say, not through the medium of any fact distinguishable from the law or command which confers or imparts the right.

(b). Taking the term 'title' in a large and loose signification (and also as measuring a fact investing a person with a right), a right of either kind may be said to begin in a title. For, in that large and loose signification, title is applicable to *any* fact by which a person is invested with a right: it is applicable to a law or command which confers a right *immediately*, as well as to an intervening fact through which a law or fact confers a right *mediately*.

Vol. III,
page 90.Ibid,
page 90.

(c). For though, to some purposes, we oppose *law* and *fact*, a law or other command is itself a *fact*. And where a law confers a right immediately (as in the grant of a monopoly by a special Act of Parliament), the law is the only fact whereon the right arises, and it is therefore the *title* (in the large and loose signification of the expression) by which the person is invested with a right.

(d). But taking the term 'title' with a narrower and stricter signification, it is not applicable to law, which confer rights *immediately*, but is applicable only to the *mediate* or *intervening* facts *through* which rights are conferred by laws. In respect of this narrower and stricter signification, the rights of the two kinds (a 1 & 2) which I am now considering may be distinguished by the following expressions:—

(1). A *right* which is annexed by law to a mediate or intervening fact may be said to originate in a *title*.

(2). A right which is conferred by a law without the intervention of a fact distinct from the law that confers it may be said to arise from the law directly or immediately; to arise *ipso jure*; to arise by *operation of law*, or by *mere* operation of law. Rights of this latter class are few and comparatively unimportant, *viz.*, those which are strictly *personal privileges*.

II. *Elements* of titles are the reasons for which rights are commonly conferred by laws through titles, and for which facts of certain descriptions are selected to serve as titles, in preference to facts of other descriptions.

12. Referring to 1 (d) 2 of the preceding paragraph, Mr. Austin proceeded to distinguish between (1st) hereditary or transmissible and assignable privileges, and (2nd) other *personal* privileges, in a way which determines the title of zemindars as appertaining to the first of these two classes of *personal pri*

APP.
XVII.KINDS OF
PRIVILEGES.

Para. 12, contd.

on a *prædium*, a privilege conferred on its successive owners or occupants as being such owners or occupants.

(b). And of *personal* privileges (or of privileges conferred upon persons as *not* being owners or occupants of specifically determined *prædia*) some are transmissible and assignable to the heirs and alienees of the grantees, and are not exclusively exercisable by the very grantees themselves.

III. But strictly speaking, a *privilegium rei* (or a privilege granted to the occupants of a given *prædium*) is not a privilege. It is not granted to the parties as being those very parties, but as being persons of a given class, or as being persons who answer to a given generic description—as being owners or occupants of the *prædium* or parcel¹ of land whereon by an ellipsis the privilege is said to be conferred.

Ibid., page 94.

IV. A so-called personal privilege transmissible to heirs or assigns, is, in so far as it is so transmissible, in the same predicament with a *privilegium rei*. In respect of the person to whom it is first granted, it may be deemed a privilege. For, in respect of that person, it is granted to a party specifically determined as bearing his individual or specific character. But, in respect of the heirs of that person, or in respect of the persons to whom he may assign it, it is not a privilege, properly so called. The law confers it upon them, not as being specifically determined persons, but as being persons of generic descriptions or classes; that is to say, as being the persons who answer to the description of his heirs, or as being persons within the description of his alienees. And, accordingly, although the first grantee may acquire by the law directly, it is utterly impossible (as I shall show immediately) that his heirs or alienees should take from the law without the intervention of a title.

13. A strictly *personal privilege* is confined to the person on whom the law or the sovereign bestowed it. The function of a title is to indicate the person to whom belongs an alienable or heritable right, or an alienable or heritable privilege, which latter is of a class of personal privileges improperly so called:

I. A privilege properly so called, or a strictly personal privilege not transmissible, may be conferred by the privilege (as meaning the law which confers it) immediately or directly; that is to say, without the intervention of a fact distinguishable from the law itself. All that is necessary to the creation of the right is the designation of the specific person by his specific character or marks, and a declaration or intimation that the right shall reside in that specified party.

II. But where a right is not properly a privilege (or is not conferred on a specific person as being that specific person), the right arises of necessity through a *title*—through a fact distinguishable from the law conferring the right, and to which the law annexes the right as a consequence or effect.

(a). For example: if you acquire by occupancy, or by alienation, or by prescription, you do not acquire as being the individual *you*, but

¹ e.g., the *neej*, *seer*, or manorial lands of zemindars.

because you have occupied the subject, or have received it from the alienor, or have enjoyed it adversely for a given time, agreeably to the provision of the rule of law which annexes the right to a fact of that description.

(b). And the same may be said of the privileges improperly so called, which are either *privilegia rei* (or privileges annexed to *prædia*) or are so-styled personal privileges passing to heirs or alienees. It is as being the occupant of the thing, and not as being the very person who then happens to occupy it, that the occupant of the thing acquires the so-called privilege. And it is as being the heir or alienee of the first grantee, and not as being the very person who is heir or alienee, that the heir or alienee of the first grantee takes the privilege mis-styled 'personal.'

III. (a). In short, wherever the law confers a right, *not* on a specific person as being such, the law of necessity confers the right through the intervention of a title. For, by the supposition, the person entitled is not determined by the law through any mark specifically peculiar to himself. And if the right were not annexed to a title, it follows that the person designed to take it could not be determined by the law at all.

(b). Instead, therefore, of determining directly that the right shall vest or reside in a specifically determined person, as being such, the law determines that the right shall reside in any person whatever who shall stand in some given relation to a fact of some given class.

IV. I will now briefly advert to the functions of titles; or, in other words, to the reason for which rights and duties are commonly conferred and imposed through titles, and for which *facts of some kinds are selected* to serve as titles, in preference to facts of other kinds.

(a). It is, I believe, impossible that every right and duty should be conferred and imposed by the law immediately. For, on that supposition, all the rights and duties of every member of the community would be conferred and imposed on every member of the community by a system or body of law specially constructed for his peculiar guidance, since every right or duty conferred or imposed by the law immediately is conferred or imposed on a person determined by the law specifically.

(b). It is only in comparatively few and unimportant cases that rights or duties can be created or extinguished by the mere operation of the law; generally speaking, rights must be conferred and extinguished, and duties imposed or withdrawn, through titles.

(c). Independently, therefore, of every other consideration, titles are necessary as marks or signs to determine the commencement of rights or duties, and to determine their end.

(d). Titles are necessary, because the law in conferring and imposing rights and duties, and in divesting them, necessarily proceeds on general principles or maxims. It confers and imposes on, or divests from persons, not as being specifically determined, but as belonging to certain classes. And the title determines the person to the class.

14. Applying these extracts to the matter in hand, it appears that—

I. Under native rule, the zemindar's, as a strictly personal privilege, was restricted to his life, and was conferred by *sunnud* on his successor.

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XVII.LEGAL FICTION
OF ZEMINDAR'S
PROPRIETARY
RIGHT.

Para. 14, contd.

II. When the Government of Lord Cornwallis determined to transmute this strictly personal privilege into a heritable alienable right, they were forced to confer the title mediately through a fact; and the fact which they selected was the zemindary, with its neej or seer lands, which were, or were constituted, the private property of the zemindar.

III. The personal privilege thus transmuted into a heritable alienable right was that of receiving from the cultivators of land the Government's share of its produce, in a fixed proportion in Behar, and up to an amount, per beegah, fixed in money, in Bengal. Out of this limited demand on the cultivator or ryot, the zemindar paid to the Government on his whole zemindary a certain fixed amount as its permanent assessment.

IV. The personal privilege was, in fact, a right of *servitus*, and, like that right (para. 13, section IIb), it was conferred through the medium of the private lands, and their appanage the public lands which constituted the zemindary.

V. The privilege conferred was only part of what belonged to Government, *viz.*, the public tax upon the land; its bestowal on the zemindar as a heritable alienable right was without prejudice to the rights of the cultivators or ryots, which were expressly reserved by the Government in the regulations which form the deed of the permanent settlement.

VI. The zemindar could trace his heritable and alienable right of *servitus* on the ryot's holding only up to the Government grant in 1789-93. The proprietary right of the cultivator in the holding was derived from a custom more ancient than law, and long anterior to the permanent settlement.

Titles.

15. Mr. Austin, proceeding with his disquisition concerning titles in general, observed:—

Vol. III, page
103.

I. Titles (or the facts *through* which the law confers and divests rights) are divisible into *simple* and *complex*.

II. A title may consist of a fact which is deemed *one* and *indivisible*. Or a title may consist of a fact which is *not* deemed one and indivisible, but is esteemed a number of single and indivisible facts compacted into a collective whole.

III. And here it is obvious to remark that every title is really complex. In the case, for example, of acquisition by occupancy (which perhaps is the least complex of all titles), the title, though deemed simple, consists, at the least, of three distinguishable facts, *viz.*:—

(a). The negative fact that the subject occupied has no previous owner.

(b). The positive fact of the occupation, or of the apprehension or taking possession of the subject.

(c). And the positive fact of the intention, on the part of the occupant, of appropriating the subject to himself, *animus rem sibi habendi*.

IV. Hence, the terms 'simple' and 'complex,' as applied to titles, are merely relative expressions. For one and the same title as viewed from different aspects, or one and the same title as considered to different purposes, may be simple *and* complex. The distinction of titles into 'simple' and 'complex' is only founded on a difference of degree. Though all titles are complex, some are more complex than others.

V. According to Mr. Bentham, the distinguishable facts which constitute a complex title are divisible, in some cases, into *principal* and *accessory*. Looking at the *rationale* of the distinction which he seems to have in view (and which is a distinction of great practical moment), I should think that *essential* or *intrinsic* and *accidental* or *adventitious* would be more significant than *principal* and *accessory*. The *rationale* of the distinction appears to be this—

(a). Titles serve as signs or marks to denote that such or such rights have vested in such or such persons, &c., &c. In other words, it is through the medium of *titles* (except in the comparatively few and comparatively unimportant cases, wherein rights and duties are conferred and imposed by the law *immediate*, or are divested and withdrawn by the law *immediate*) that the respective rights and duties of the several members of the community are distributed or assigned. Setting aside those few unimportant exceptional cases, persons are invested and burthened with rights and duties, or are divested and discharged of rights and duties, not as being determined by their specific or peculiar characters, but as belonging to *classes* of persons. And it is through the medium of the various titles that they are determined respectively to those various classes.

(b). But it is seldom that a right or a duty is annexed to a title, &c., merely because the title serves as such a mark. For if the title merely served as a mark to fix the commencement or determination of the right or duty, almost any fact might serve the turn, as well as the fact which *is* the title. There are generally certain reasons, derived from the nature of the fact which serves as a title, why such or such a right should be annexed to that fact rather than another; why such or such a duty should be annexed to that fact rather than another; or why that fact rather than another should divest such or such a right or duty.

(c). Independently of the title serving to mark that this or that person has been invested or burthened with this or that right, or this or that duty, there are generally or always reasons, derived from the nature of the fact which *is* the title, why the given person should be so invested or burthened, through or in consequence of that very fact.

(d). Now—

(1). It may happen that, looking at the reasons or purposes for which a given right is annexed to a given title, *all* the facts of which the title constituted are of its very essence. In other words, the right could not arise (consistently with those reasons or purposes) through or in consequence of the title, if *any* of the simple facts into which the title is resolvable were not an ingredient or an integrant part of it. But—

(2). It may also happen that, looking at the reasons or purposes for which a given right is annexed to a given title, one or more of the facts

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TITLES.

Para. 15, contd

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TITLES.

Para. 15, contd.

of which the title is constituted are *not* of its very essence. In other words, the right might arise (consistently with those reasons or purposes) through or in consequence of the title, though one or more of the facts of which the title is compounded were *not* constituent parts of it.

(3). For example: looking at the reasons for which a convention is made legally obligatory, or for which legal rights and duties are conferred and imposed on the parties to the agreement, a promise by the one party, and an acceptance of the promise by the other party, are of the essence of the title. But, in certain cases, a convention is not legally binding, unless the promise be reduced to writing, and the writing be signed by the promisor; or unless the promise be couched in a writing of a given form; or (generally) unless the contracting parties observe some solemnity which has no necessary connexion with the promise and acceptance.

(4). Now, though the given solemnity, let it be what it may, is in all cases a constituent part of the title, it is not of the essence of the title. For, looking at the general reasons for which conventions generally are made obligatory, or to the particular reasons for which rights and duties are annexed to conventions of a particular class, the right and duty might arise (consistently with those reasons), although the solemnity were no portion of the title. The solemnity may be convenient evidence of that which is essential to the title, but though it is a part of the title, it is not necessarily such.

(e). Now, where the right might arise (consistently with the reasons for which it is annexed to the title), though some of the facts constituting the title were not component parts of it, the several facts into which the title is resolvable may be divided into *essential* and *accidental*, *intrinsic* and *adventitious*, or (in the language of Mr. Bentham) *principal* and *accessory*. The facts which are essential and principal are part of the title, because they are absolutely necessary to the accomplishment of the purposes for which the right is annexed to the title by the lawgiver. But the facts which are accidental or accessory are constituent parts of the title, not because they are *necessary* to the accomplishment of those purposes, but for some reason foreign to those purposes, or merely to render their accomplishment more sure or commodious.

VI. (a). Where some of the elements of a title are accidental or accessory, they (generally speaking) are merely subservient to the essential or principal parts of it. For example, they serve as *evidence*, preappointed by the law, that that which is substantially the title has happened. This is the case wherever tradition or delivery of the subject, or a writing with or without seal, or an entry or minute of the fact in a register, or any other solemnity of the like nature, is a constituent part of a valid alienation of a thing of a given class.

(b). The essentials of the alienation, as between the alienor and alienee, are a free will and intention on the part of the former to divest himself of the right and to invest the other with it; an acceptance of the proffered right by the alienee; and some fact or another evincing or signifying such intention and acceptance. The tradition, the writing, the entry in the register, or the other solemnity, is merely evidence, required or preappointed by the law, of that which is essentially the title.

(c). *Some* evidence of the intention and acceptance is indeed absolutely necessary. But evidence other than the solemnity, which is a constituent part of the title (as, for example, a verbal declaration), might also serve as evidence of the intention and acceptance. The case of a writing, or other solemnity, which is merely preappointed evidence of the facts that are essentially the title, but which nevertheless is a constituent part of the title, shows clearly the nature of the distinction between the essential or principal and the accidental or accessory parts of a title.

(d). The evidentiary fact is made part of the title, or is rendered necessary to the validity of the title, in order that that evidence of the substance of the title, which the lawgiver exacts, may be provided by the party or parties with whom the title originates.

VII. (a). The invalidity or nullity of the title, in case the evidentiary fact be not a constituent part of it, is the *sanction* of the rule of law by which the evidence is required. But it is clear that the rule of law might be sanctioned¹ otherwise; and that if it were sanctioned otherwise, the preappointed evidence, though still requisite, would be no part of the title.

(b). For example: the absence of the given solemnity, instead of nullifying the title (or being made a presumption, *juris et de jure*, that the title has not accrued), might be made a presumption *primâ facie*; that is to say, a presumption which the party insisting on the title might be at liberty to rebut, by explaining the reason why the prescribed solemnity had not been observed, and by producing evidence *other* than the preappointed solemnity, that the title *had* accrued.

(c). Or the absence of the given solemnity might be visited on the party bound to observe it, not by nullifying his title, but by punishing him with a pecuniary fine (as, for instance, where a document of title is unstamped).

(d). And on either of these suppositions, the prescribed solemnity, though still prescribed or exacted, would not be *indispensable* evidence of the *substance* of the title, or (what is the same thing) would not be a *constituent part* of the *whole* title. For it is manifest that, wherever an evidentiary fact is indispensable evidence of a given title, *that* evidentiary fact is a component part of the title, although it is not an *essential* part, but is merely an *accidental* or *adventitious* one.

VIII. In many cases it is not easy to distinguish the essential or principal from the accidental or accessory elements of a title. This, for example, is the case where an accidental element is made a part of the title—not absolutely, but only in a qualified manner. For *some* evidence of the title is indispensable or necessary, inasmuch as the title could not be sustained (in case it should be impugned) if some evidence of it be not forthcoming or producible.

IX. The pre-appointed evidence is therefore an accidental or accessory part of the title, not because *evidence* is not essential to the validity of the title, but because evidence of the *class* or *description* which the law preappoints or prescribes is not the *only* evidence by which the title might be sustained. The law might leave the parties to provide what evidence they pleased of the title; and might empower the tribunals to

¹ As is done in the Law of Prescription or Limitation.

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—
TITLES.

Para. 15, contd.

admit the evidence provided by the parties, if they deemed it satisfactory. By determining, therefore, that evidence of a *root* shall be indispensable, the law adjoins to the title an element which is properly accidental or accessory.

16. Respecting *usucapion*, Mr. Austin wrote as follows:—

Vol. III, page
109.

I. The effect of *usucapion* (*a species of prescription*) is this: It cures the fault which vitiates tradition or delivery, where the party from whom the delivery proceeds has not the right *in rem* which he affects to transfer. Here the tradition by itself is inoperative; though, coupled with subsequent possession on the part of the alienee, it may give him the right *in rem* after a certain interval. But in order that the alienee may benefit by his subsequent possession, *bona fides* is requisite. His subsequent possession works nothing, or, in other words, there is no *usucapion* unless he believes, at the time of the delivery, that the person affecting to alien is competent to pass the right. But this he can scarcely believe unless the tradition or delivery be made in the legal manner; unless the tradition or delivery *would* transfer the right, supposing that the party who makes it *had* the right to transfer. Consequently, '*justus titulus*,' '*justum initium*,' or '*justa causa*,' is a condition precedent to *usucapion*; for it necessarily precedes the tradition by which the possession is preceded, and upon which the possession operates. The contract which is the inducement to the tradition is the *titulus ad acquirendum*. The vicious tradition, and the possession which purges it of the vice, constitute the *modus acquirendi*.

II. Now, in these cases, the division of the entire acquisition into a *mode of acquisition* and a *title to acquire*, is intelligible. But in many cases it were utterly senseless. Take, for example, the case of occupation, *i. e.*, acquisition by *apprehension* or *seisin*, of a subject which belongs to no one (*res nullius*). Here the entire acquisition is a simple and indivisible incident. You may call that simple incident a *mode of acquisition*, or you may call it a *title*. But to split it into a *mode of acquisition* and a foregoing title is manifestly impossible.

17. Applying these extracts to the subject in hand, it appears that—

I. When land which is *res nullius* is acquired through the cultivation of it, the possession thereof by the cultivator and his descendants constitutes a perfect title, which is free from accidental or accessory elements. In such cases *onus* of proof does not rest on the possessor, but on him who seeks to disturb possession.

II. Accessory elements enter into title only on the first or on any subsequent transfer after the original acquisition of the simple title. Defects arising during these transfers, in the accidental or accessory elements of title, are condoned under the law of limitation. Up to a certain point *onus* of proof rests with the possessor, in respect of titles clogged with accessory elements.

III. Until the permanent settlement, the title of the resident cultivators in a village to their respective lands or holdings was a title to land originally *res nullius*, which title had been acquired mainly through inheritance from those who had brought it into cultivation, and partly by themselves reclaiming it from waste.

IV. The title was a simple title, such as in I; and the payment of the land tax or established customary pergunnah rate of rent for the lands did not derogate from the title.

V. Nor was it encumbered with an accidental or accessory element when the regulations of the permanent settlement required the zemindar to give to each ryot a pottah specifying the quantity of land he held and the amount of rent which he was to pay. According to the minutes of Lord Cornwallis and Sir John Shore, the pottah was designed for the ryot's protection as a simple record of the utmost which the zemindar could demand from him; it was not an essential or an accidental fact of the ryot's title to occupancy; it was simple evidence of the amount which the zemindar and ryot had agreed upon as expressing the customary pergunnah rate of rent.

VI. On the part of a resident cultivator in a village, his title to occupy on payment of the established pergunnah rate of rent was outside the pottah, or record of what he should pay as rent; and, in accordance with I, no burthen of proving title rested upon him, unless he claimed to pay less than the ancient established pergunnah rate, which, as existing in 1793, was immutable under the regulations of that year.

18. Respecting "custom," the following may be quoted:—

APP.
XVII.

CUSTOM.

Para. 18, contd.

a certain named district, without showing any legal cause or consideration for it; whereas prescription must have a prescribed legal origin, and is either a personal right, always claimed in the name of a person certain and his ancestors, or those who a estate he has, or by a body politic and their predecessors, or else is in a *quæ estate*; that is, a right attached to the ownership of a particular estate, and only exercisable by those who are seised of it.

II.—BLACKSTONE'S COMMENTARIES.

(After stating the foregoing rules for determining the validity of custom)—

(a). Customs ought to be *certain*. A custom to pay two pence an acre in lieu of tithes is good, but to pay sometimes two pence and sometimes three pence, as the occupier of the land pleases, is bad for its uncertainty. Yet a custom to pay a year's improved value for a fine on a copyhold estate is good, though the value is a thing uncertain; for the value may at any time be ascertained; and the maxim of law is, *id certum est, quod certum reddi potest*.

The conditions in section I are fulfilled in the custom of the occupancy right of the resident cultivators in a village, and the condition in section II is fulfilled by their payment for these lands of the established customary rate of the *pergunnah*. The Regulations of 1793 did not interfere with the custom under which occupancy right of waste land, subject to payment of the established *pergunnah* rate, was acquired; for those regulations restrained the zemindar from exacting more than the established *pergunnah* rate of rent from any class of ryots.

cy. 19. It is established in the two preceding paragraphs (1) that the resident cultivator's title to his land remained unaffected by the Pottah Regulations of 1793; (2) that it rested on possession, through inheritance or by acquisition, of what originally was *res nullius*; (3) that the title was not encumbered with accidental or accessory elements; (4) that the custom under which the residents of a village could cultivate its waste lands, and acquire occupancy rights therein, was not interrupted or closed by the Regulations of 1793. At the same time, the settlement of 1793 was designed to be permanent for both the ryot and the zemindar. It follows, therefore, that the custom of resident cultivators' rights remained unaffected after 1793; and that the bulk of the cultivators in 1859 were those who had occupancy rights. It is testified that but comparatively few ryots in 1859 held lands under pottahs; that is, held as non-resident cultivators.

20. Accordingly, when Act X of 1859 withdrew the right of occupancy from those who had not occupied for twelve years, without distinguishing between non-resident cultivators and the resident descendants of resident cultivators, the legislature encroached upon rights which the permanent settlement had secured to ryots; though it did so under a delusion that it was benevolently conferring a right of prescriptive occupancy on holders for more than twelve years, who needed no such prescription.

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SION.
—
Para. 20.

21. In the Standard Library *Cyclopædia of Political and Forensic Knowledge*, the author of the article on Possession gives, among others, the following extracts from Savigny's work on the Law of Possession:—

Law of posses-
sion.

I. "All the definitions of possession are founded on one common notion. By the notion of possession of a thing we understand that condition by virtue of which not only are we ourselves physically capable of operating upon it, but every other person is incapable. This condition, which is called detention, and which lies at the foundation of every notion of possession, is no juristical notion, but it has an immediate relation to a juristical notion, by virtue of which it becomes a subject of legislation.

II. "As ownership is the legal capacity to operate on a thing at our pleasure, and to exclude all other persons from using it, so is detention the exercise of ownership, and it is the natural state which corresponds to ownership as a legal state.

III. "If this juristical relation of possession were the only one, everything concerning it that could be juristically determined would be comprehended in the following positions: the owner has a right to possess; the same right belongs to him to whom the owner gives the possession; no other person has this right.

IV. "But the Roman law, in the case of possession as well as of property, determines the mode in which it is acquired and lost; consequently, it treats possession not only as a consequence of a right, but as a condition of rights. Accordingly, in a juristical theory of possession, it is only the right of possession (*jus possessionis*) that we have to consider, and not the right to possess (called by modern jurists *jus possedendi*), which belongs to the theory of property.

V. "We now pass from the notion of mere detention to that of juristical possession, which is the subject of this treatise. * * * The questions we have to consider are—whether possession is to be considered as a right, and whether as a *jus in re*.

(a). "The first and simplest mode in which possession appears in a system of jurisprudence consists in the owner having the right to possess; but we are here considering possession independent of ownership, and as the source of peculiar rights. The former of these two questions,¹ therefore, may be expressed thus: in what sense has 'possession' been

¹ Whether possession is to be considered as a right.

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Para. 21, contd.

distinguished from 'ownership'? a mode of expression which has been used by many writers.

(b). "In the second place, we must determine how the different senses in which 'possession' occurs in the Roman law are distinguished from one another by the mode of expression; and particularly what were the significations of *Possessio* generally, and *Possessio naturalis*, and *Possessio civiles*, among the Roman jurists.

VI. "In the whole system of Roman law there are only two consequences which can be ascribed to possession of itself, as distinct from all ownership, and these are Usucapion and Interdicts.

VII. "The foundation of usucapion is the rule of the twelve tables, that he who possesses a thing one or two years, becomes the owner. In this case, bare possession, independent of all right, is the foundation of property, which possession must indeed have originated in a particular way, in order to have such effect; but still it is a bare fact, without any other right than what such effect gives to it. Accordingly, it is possession itself, distinct from every other legal relation, on which usucapion, and consequently the acquisition of ownership, depends.

VIII (a). "Possessional interdicts are the second effect of possession, and their relation to possession is this: possession of itself being no legal relation, the disturbance of possession is no violation of a legal right, and it can only become so by the circumstance of its being at the same time a violation of a legal right.

(b). "But if the disturbance of possession is effected by force, such force is a violation of right, since every forcible act is illegal; and such illegal act is the very thing which it is the object of an interdict to remedy. All possessional interdicts, then, agree in this: they presuppose an act which in its form is illegal.

(c). "Now, since possessional interdicts are founded on such acts as in their form are illegal, it is clear why possession, independent of all regard to its own rightfulness, may be the foundation of rights.

(1). "When the owner claims a thing as his property (*vindicatio*), it is a matter of perfect indifference in what way the other party has obtained possession of it, since the owner has the right to exclude every other person from the possession of it.

(2). "The case is the same with respect to the interdict by which the *nussio en possessionem* is protected; this interdict is not a possessional interdict, for the *nussio* itself gives no possession, but it gives a right to detention, and this right is made effective in the same way as in the case of property.

(3). "On the other hand, he who has the bare possession of a thing, has not, on that account, any right to the detention; but he has a right to require from all the world that no force shall be used against him. If, however, force is used and directed against his possession, the possessor protects himself by means of the interdicts. Possession is the condition of these interdicts, and in this case, as in the case of usucapion, it is the condition of rights generally.

IX. "Most writers take quite a different (to VIIIc, 2 and 3) view of the matter, and consider every violation of possession as a violation of a legal right, and possession consequently as a right of itself, namely, presumptive ownership, and possessional complaints as provisional vindica-

tions. This last, which is the practical part of this opinion, is completely confuted in a subsequent part of this treatise; but it is proper to show here how far such a view is true, as this may be a means of reconciling conflicting opinions.

(a). "The formal act of illegality above mentioned is not to be so understood as if possessional interdicts were a necessary consequence of the independent juristical character of force, and obviously sprung out of it. This consequence of force, namely, that possession of the thing must be restored to the person who has been ejected, without regard to the question whether or not he has any right to the thing, is rather, simply, a positive rule of law.

(b). "Now, if we ask the reason of this kind of protection being given against force, that is, why the ejected party should recover the possession to which he may possibly have no title, it may be replied that the reason is the general presumption that the possessor may be the owner.

(c). "So far, then, we may view possession as a shadow of ownership, as a presumed ownership; but this view of the matter only extends to the establishment of the rule of law in general, and not to the legal reason for any particular case of possession. This legal reason is founded rather in the protection against the formal injury; and accordingly possessional interdicts have a completely obligatory character, and can never be viewed as provisional vindications."

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Para. 22.

22. The writer in the *Cyclopædia* continued:—

I. The special object of Savigny's essay may be collected from these passages. The legal principles here developed are applicable to every system of jurisprudence. There must always be a distinction between the right to possess, which is a legal consequence of ownership, and the right of possession, which is independent of all ownership. The owner of a thing may not have the possession, but he has a right to the possession, which he must prosecute by legal means.

II. The possessor of a thing, simply as such, has rights which are the consequences of his possession, that is, he is legally entitled to be protected against forcible ejection or fraudulent deprivation; his title to a continuance of his possession is good against all persons who cannot establish their right to the thing, and this continued possession may, according to the rules of positive law in each country, become the foundation of ownership.

III. It may be that the acquisition of possession may also be the acquisition of ownership, or that the acquisition of possession may be essential to the acquisition of ownership. Thus, in the case of occupation, the taking possession of that which has no owner, or the acquisition of the possession, is the acquisition of the ownership. Also, when a thing is delivered by the owner to another, to have as his own, the acquisition of the possession is the acquisition of the ownership. In these examples, ownership and possession are acquired at the same time, and there is no right that belongs to the possessor as possessor; his rights are those of owner.

IV. But the form and mode of the acquisition of the possession, viewed by itself as distinct from the acquisition of the ownership, will

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(Para. 22, contd.)

also be applicable to the cases of possession when possession only is acquired. For possession of itself is a bare fact, though it has legal consequences; and being a bare fact, its existence is independent of all rules of the civil law or of the *jus gentium*, as to the acquisition and loss of rights.

V. Having shown that in the Roman law all juristical possession has reference to usucapion and interdicts, and that the foundation of both is a common notion of juristical possession, Savigny proceeds to determine conditions of this notion.

(a). In order to lay the foundation of possession as such, there must be detention; and there must also be the intention to possess, or the *animus possidendi*. Consequently, the *animus possidendi* consists in the intention of exercising ownership. But this ownership may either be a person's own ownership or that of another; of the latter, there is no such *animus possidendi* as makes detention amount to possession. In the former case, a man is a possessor because he treats the thing as his own; it is not necessary that he should believe it to be his own.

(b). Whether, then, we are considering possession as such, or that possession which is concurrently acquired with ownership, or which completes the acquisition of, or is the exercise of, ownership, the material facts of possession are the same.

(c). When ownership is transferred from one man to another, every system of law must require some evidence of it. But the evidence of the transfer of ownership may be entirely independent of the evidence of acquisition of possession; and also the evidence of the acquisition of possession may be inseparable from that of the acquisition of ownership.

(d). There must, then, generally, be some act which shall be evidence of the acquisition of possession, whether possession as such is obtained (1) without ownership, or (2) possession accompanied by ownership, or (3) possession as necessary to the complete acquisition of ownership, or (4) possession as simply the exercise of ownership.

23. Applying these remarks to the matter in hand, we may here interpolate a query. Until the permanent settlement, the ryots were the proprietors of their holdings, with a permanent hereditary occupancy right, and with an indefinite power of user, subject only to the payment of the land tax to an amount not exceeding the ancient established pergunnah rate. In the permanent settlement, the zemindars were declared proprietors, so called, of the soil: correctly interpreted, that declaration constituted them proprietors of simply the alienated portion of the gross land tax, which, through the greater part of Bengal, was realized in fixed money amounts, in accordance with ancient established pergunnah rates. Understanding in this sense the new proprietary right of the zemindars, it did not conflict with the resident cultivator's proprietary right. But, according to another interpretation, the ryots were expropriated, and the zemindars were constituted proprietors of the land by the

regulations of the decennial settlement afterwards made permanent. It was necessary, however, to complete the new title (as thus understood) of the zemindars, that they should take actual possession of the lands from the ryots. Was this ever done? We know that it was not.

24. The article in the Standard Library *Cyclopædia* proceeds as follows with the exposition of the principles of the law on this subject:—

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Para. 24.

I. It is remarked by Savigny "that, in the whole theory of possession, nothing seems easier to determine than the character of corporeal apprehension which is necessary to the acquisition of possession. By this fact all writers have understood an immediate touching of the corporeal thing, and have accordingly assumed that there are only two modes of apprehension: laying hold of a movable thing with the hand, and entering with the foot on a piece of land."

II. "But as many cases occur in the Roman law in which possession is acquired by a corporeal act without such immediate contact, these cases have been viewed as symbolical acts, which, through the medium of juristical fiction, become the substitute for real apprehension." After showing that this is not the way in which the acquisition of possession is understood in the Roman law, and that there is no symbolical apprehension, but that the acquisition of possession may in all cases be referred to the same corporeal act, he determines what it is, in the following manner:—

"(a). A man who holds a piece of gold in his hand is doubtless the possessor of it; and from this and other similar cases has been abstracted the notion of a *corporeal contact generally*, as the essential thing in all acquisitions of possession.

"(b). But in the case put, there is something else which is only accidentally united with this corporeal contact, *viz.*, the physical possibility to operate immediately on the thing, and to exclude all others from doing so. That both these things concur in the case put (a) cannot be denied; that they are only accidentally connected with corporeal contact, it follows from this, that the possibility can be imagined without the contact, and the contact without the possibility. As to the former case, he who can at any moment lay hold of a thing which lies before him, is doubtless as much uncontrolled master of it as if he actually had laid hold of it. As to the latter, he who is bound with cords has immediate contact with them, and yet one might rather affirm that he is possessed by than that he possesses them.

"(c). This physical possibility, then, is that which as a fact must be contained in all acquisition of possession; corporeal contact is not essential in that notion, and there is no case in which a fictitious apprehension need be assumed."

III. This clear exposition of a principle of Roman law is applicable to all systems of jurisprudence which have received any careful attention; for the principle is in its nature general. It may be that the expounders of our law have not always clearly seen this principle, and when they have recognised it; and it may be that they have not acted upon it.

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Para. 21, contd.

IV. Still it will appear from various cases that the physical possibility of operating on a thing is the essential character of the acquisition of possession in the English law. In the case of *Ward vs. Turner* (2 Vez, 431) it was held by Lord Hardwicke that delivery of the thing was necessary in a case of "*donatio mortis causa*," and delivery of receipts from South Sea annuities was not held sufficient to pass the ownership of the annuities. In his judgment Lord Hardwicke observed: "Delivery of the key of bulky things, where wines, &c., are, has been allowed a delivery of the possession, because it is the way of coming at the possession, or to make use of the thing; and therefore the key is not a symbol, which would not do." In one of his chapters Savigny uses the very same example of the key, showing that it is not a symbol, but the means of getting at things which are locked up, and therefore the delivery of the key of such things, when they are sold, is a delivery of the possession.

25. It appears from these extracts that the delivery of possession must not be by symbol, but an actual delivery, by which the person inducted acquires possession in the sense of being able, physically, to operate immediately on the thing or land, and to exclude all others from doing so. There was such delivery, in the case of zemindars, if they were vested with proprietary right in only the alienated part of the Government's share of the produce of ryots' lands; but there was no such delivery, if actual proprietorship of those lands, to the dispossession of the ryots, was intended. The day before the decennial settlement, the Government had not the title to take land from resident cultivators without buying it separately from each of them, or compensating each separately for his expropriation; and even if Government could, conceivably, have had the power to withdraw from the ryot and to vest in the zemindar a proprietary right in the ryot's land, which the former did, and the zemindar did not possess, still there was no actual delivery of the land to the zemindar, in this sense; and accordingly the possession of the ryot was not disturbed by the regulations of the decennial settlement;—it remained precisely what it was before, *viz.*, a hereditary occupancy according to a custom more ancient than law. On the other hand, the zemindar not having obtained possession by actual delivery, within twelve years, or even within sixty years after the decennial settlement, any proprietary right greater than that in the alienated portion of the Government's share of the gross demand on the ryot, which, by a forced construction of the Regulations of 1793 may be held to have been vested in the zemindar by those regulations, has lapsed, it being barred now by prescription, inasmuch as possession by actual deli-

very of each ryot's holding was not given to the zemindar within twelve or even within sixty years after 1793.

26. The Government of 1793 was fully aware that a grant not completed by possession was invalid: in Regulation XIX of 1793, section 11, it was enacted that all grants for holding land exempt from the payment of revenue, made previous to the 12th August 1765, the date of the Company's succession to the dewany, by whatever authority, and whether by a writing or without a writing, shall be deemed valid, provided the grantee actually and *bonâ fide* obtained possession of the land so granted previous to the date above mentioned, &c.

27. As the Government which enacted this did not give the zemindar possession of each ryot's holding, it follows that the proprietary right in the holding was not given by the Government to the zemindar in the regulations of the decennial settlement afterwards made permanent.

28. The Standard Library Cyclopædia of Political and Forensic Knowledge contains the following respecting PRESCRIPTION :—

I. The following definition of prescription appears to be both sufficiently comprehensive and exact: "Prescription is where a man claimeth anything for that he, his ancestors, or predecessors, or they whose estate he hath, have had or used anything all the time whereof no memory is to the contrary." From this it follows that prescription may be a claim of a person as the heir of his ancestors, or by a corporation as representing their predecessors, or by a person who holds an office or place in which there is perpetual succession; or by a man in right of an estate which he holds.

II. It is essential to prescription (subject to the limitations hereinafter mentioned) that the usage of the thing claimed should have been time out of mind continuous and peaceable. "Time out of mind" means that there must be no evidence of non-usage or of interruption inconsistent with the claim, and of a date subsequent to the first year of Richard I, which is the time of commencement of legal memory.

III. If it can be shown, either by evidence of persons living, of writing, or by any other admissible evidence that the alleged usage began since the first year of Richard I, the prescription cannot be maintained.

IV. Repeated usage also must be proved in order to support the prescription; but an uninterrupted enjoyment for twenty years has been considered sufficient proof where there is no evidence to show commencement of the enjoyment. * * It is said that prescription is founded on the assumption of an original grant, which is now lost.

29. These rules of prescription at common law apply to privileges or exemptions, as well as to rights to land arising

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out of adverse possession. The principle of the law, as affecting adverse possession, is indicated in the following extract from Burton's Law of Real Property:—

I. If a person be disseised or otherwise unlawfully deprived of his land, he may enter when he sees his opportunity, and so restore or commence his own seisin. So if his reversion or remainder in any land be illegally diverted, he may nevertheless enter when the time for his possession has arrived; and if the act of divestment amount to a forfeiture of the only preceding particular estate, he may enter immediately.

II. But in all these cases, until such entry, or until the remainder or reversion is reverted by the entry of the person entitled to a particular estate, the person injured has no estate which he can convey or devise; he has only a *right*, which will descend as the land, if vested in him by a mere seisin in law, would have descended; unless he *release* it to the person in actual *seisin*, or to one in whom a reversion or remainder of freehold is for the time vested.

III. This right of entry will be lost if the wrong-doer be suffered to keep possession of the land without sufficient interruption till his death, and then transmit it by immediate descent (without curtesy or power interposed) to his heir; provided that the person who has right do not labour under some disability at the time of his descent, from which he has never been free since his right accrued. * *

IV. Moreover, by Stat. 21, Jac. 1, c. 16, "for quieting of mens' estates and avoiding of suits," it is enacted in s. 1 "that no person or persons shall make any entry into any lands, tenements, or hereditaments, but within twenty years next after his or their right or title, which shall first descend or accrue to the same; and in default thereof, such persons so not entering, and their heirs, shall be utterly excluded and disabled from such entry after to be made."

30. Mr. Austin described the right of adverse possession as follows:—

I. If one person exercise a right residing in another person, but without authority from the latter, without authority from those through whom the latter is entitled, and without his adverse possession having begun *vi*, or through any of the means which fall within the name of *violence*, he acquires by his unauthorized or *adverse* exercise the anomalous right which is styled the *right of possession*, as distinguished from the *right to possess*.

II. The right of possession is that right to possess (or to use or exercise a right) which springs from the fact of an adverse possession not beginning through violence.

III. As against all but the person whose right is exercised adversely, the person who exercises the right of possession is clothed with the very right which he affects to exercise. And as against the person whose right is exercised adversely, he may acquire the very right which he affects to exercise, through the title or mode of acquisition styled *prescription*. Or (adopting a current but inadequate phrase) the rights

of possession repass, by prescription, into the right of dominion or property.

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31. The extracts in the three preceding paragraphs state the rules of prescription at common law, respecting privileges founded on usage and titles to land arising from adverse possession. The Statute law on these two divisions of the subject is contained, for adverse possession and suits relating to real property, in 3rd and 4th Will. IV, cap 27; for incorporeal hereditaments in 2nd and 3rd Will. IV, caps. 71 and 100.

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EVER-RECUR-
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32. Acts 3rd and 4th Will. IV. cap 27, or "an Act for the limitation of actions and suits relating to real property, and for simplifying the remedies for trying the rights thereto," related to Land and Rent, which words were interpreted by the Act in the following sense:—

I. "LAND" shall extend to manors, messuages, and all other corporeal hereditaments whatsoever, and also to tithes (other than tithes belonging to a spiritual or Eleemosynary Corporation Sole), and also to any share, estate, or interest in them or any of them, whether the same shall be a freehold or chattel interest, and whether freehold or copyhold, or held according to any other tenure.

II. "RENT" shall extend to all heriots, and to all services and suits for which a distress may be made, and to all annuities and periodical service of money charged upon or payable out of any land (except moduses or compositions belonging to a spiritual or eleemosynary corporation sole).

III. And be it further enacted that after the 31st day of December 1833, no person shall make an entry or distress, or bring an action to recover any land or rent, but within twenty years next after the time at which the right to make such entry or distress, or bring such action, shall have *first* accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same.

The words "*first* accrued," which occur twice in the preceding extract, apply alike to claims for rent and to claims for land; and by placing suits for rent under the same limitation as suits respecting adverse possession of land, they discountenance any such *dictum*, as that rent is an ever-recurring cause of action, and is therefore not subject to the law of limitation.

33. A distinction is, indeed, observed between rents from tenants-at-will or those who hold under lease or contract, and other rents which are compulsory and definite, such as

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tithes. The former are not subject to prescription, as observed in Stephen's edition of Blackstone, Vol. I, Book II, Part I:—

“A tenant for life, or years, or at will, or a copyholder, cannot prescribe by reason of the imbecility of these estates. For as prescription is usage beyond time of memory, it is absurd that they should pretend to prescribe for anything, whose estates commenced within the remembrance of man; and therefore the tenant for life, or for other estates short of the fee, must prescribe under cover of the tenant in fee-simple.”

34. The established pergunnah rate of rent is strictly analogous to tithes. Like the latter, it was fixed in amount, or determined according to fixed rules, until the wrongdoings of zemindars obliterated traces of that ancient established pergunnah rate of 1793, which the authors of the permanent settlement designed should be permanent and immutable; it was not a matter of contract, but was determined by ancient custom; and it was obligatory on the cultivator, notwithstanding his fixed occupancy right, and his cultivating without lease. Act 2nd and 3rd, Will. IV, Cap. 100, or “An Act for shortening the time required in claims of *modus decemendi*, or exemption from or discharge of tithes,” protected lands or tenements from assessment for tithes, or from enhancement of tithes, after the lapse of periods of limitation prescribed in that statute.

35. Tithes are a rent charge, or a species of rent; but it never occurred to the English legislature that rent was an ever-recurring cause of action, and that therefore tithes should be exempted from the statute of limitation.

ter. 36. Going back to para. 27, it may be observed that the Government, according to their own definition of the term “proprietors of the soil,” used the words in a non-natural sense, in the Regulations of 1793 (Appendix XVI, paras. 34 to 38). Notwithstanding the explicit definition by Government of the restricted sense in which the words were used, eminent judges have reasoned away the rights of the ryots, through a rigidly literal interpretation of the words. Their true construction will be helped by the following extracts from Mr. Austin's Note on Interpretation, in his Lectures on Jurisprudence:—

I. The discovery of the law which the lawgiver intended to establish is the object of genuine interpretation; or (changing the phrase) its object is the discovery of the intention with which he constructed the statute, or of the sense which he attached to the words wherein the statute is expressed.

II. The literal meaning of the words wherein the statute is expressed is the primary index or clue to the intention or sense of its author. Now, the literal meaning of words (or the grammatical meaning of words) is the meaning which is attached to them by custom, that is, by all or most of the persons who use habitually the given language, or (if the words be technical) by all or most of the persons who are specially conversant or occupied with the given art or science.

III. Occasionally, the customary meaning of the words is indeterminate and dubious. What is the meaning which custom has annexed to the words is, therefore, an inquiry which the interpreter may be called upon to institute.

IV. Consequently, the interpretation of a statute by the literal meaning of the words may possibly consist of a two-fold process—namely, an inquiry after the meaning which custom has annexed to the words, and a use of that literal meaning as a clue to the sense of the legislature.

(a). The interpreter seeking the meaning annexed to the words by custom may not be able to determine it, or, having determined it, he may not be able to find in it any determinate sense that the legislator may have attached to them. And on either of these suppositions he may seek in other *indicia* the intention which the legislature held.

(b). Or, when he has determined or assured the customary or literal meaning of the words, the interpreter may be able to discover in that literal meaning a determinate or definite intention that the legislature may have entertained. And on this supposition he ought to presume strongly that the possible intention which he finds is the very intention or purpose with which the statute was made.

(c). The intention, however, of the legislature, as shown by that literal meaning, may differ, however, from its intention, as shown by other *indicia*; and the presumption in favour of the intention which that literal meaning suggests may be fainter than the evidence for the intention which other *indicia* point at. On which supposition the last of these possible intentions ought to be taken by the interpreter as, and for, the intention which the legislature actually held. For the literal meaning of the words, though it offers a strong presumption, is not conclusive of the purpose with which the statute was made.

V. It appears, then, from what has foregone, that the subjects of the science of interpretation are principally the following, namely (1) the natures of the various indices to the customary meaning of the words in which the statute is expressed; (2) the natures of the various indices, other than that literal meaning, to the intention or sense of the lawgiver; (3) the cases wherein the intention which that literal meaning may suggest should bend and yield to the intention which other *indicia* may point at.

VI. Having stated the object or purpose of genuine interpretation, and pointed at the subjects of the science which are conversant about it, we will touch upon the interpretation, *ex ratione legis*, through which an unequivocal statute is extended or restricted.

(a). It may happen that the author of a statute, when he is making the statute, conceives and expresses exactly the intention with which he is making it; but conceives imperfectly and confusedly the end which determines him to make it.

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Para. 36, contd.

(b). Now, since he conceives its scope inadequately and indistinctly, he scarcely pursues its scope with logical completeness, or he scarcely adheres to its scope with logical consistency. Consequently, though he conceives and expresses exactly the intention with which he is making it, the statute, in respect of its reason, is defective or excessive. Some class of cases which the reason of the statute embraces is not embraced by the statute itself; or the statute itself embraces some class of cases which a logical adherence to its reason would determine its author to exclude from it.

VII. (a). But, in pursuance of a power which often is exercised by judges (and, where they are subordinate to the State, with its express or tacit authority), the judge who finds that a statute is thus defective or excessive, usually fills the chasm or cuts away the excrescence.

(b). In order to the accomplishment of the end for which the statute was established, the judge completes or corrects the faulty or exorbitant intention with which it was actually made. He enlarges the defective or reduces the excessive statute, and adjusts it to the reach of its ground. For (1) he applies it to a case of a class which it surely does not embrace, but to which its reason or scope should have made the lawgiver extend it; or (2) he withholds it from a case of a class which it embraces indisputably, but which its reason or scope should have made the lawgiver exclude from it.

(c). Now, according to a notion or phrase which is current with writers on law, the judge who thus enlarges or thus reduces the statute, "interprets the statute by its reason;" or his extension or restriction of the defective or excessive statute is "extensive or restrictive interpretation *ex ratione legis*." His adjustment, however, of the statute to the reach or extent of its ground, is a palpable act of judicial legislation, and is not interpretation or construction (in the proper acceptance of the term). The discovery of the intention with which the statute was made is the object of genuine interpretation; and of the various clues to the actual intention of the lawgiver, the reason of the statute is one.

(d). But where a statute is extended or restricted in the manner which we are now considering, the actual intention of the lawgiver is not doubted by the judge. Instead of unaffectedly seeking the actual intention of the lawgiver, and using the reason of the statute as one of the various clues to it, the judge rejects an actual (though faulty or exorbitant) intention which the lawgiver palpably held. Instead of interpreting a statute obscurely and dubiously worded, the judge modifies a statute clearly and precisely expressed, putting, in the place of the law which the lawgiver indisputably made, the law which the reason of the statute should have determined the lawgiver to make.

(e). Consequently, where the judge, in show, interprets the statute restrictively, he abrogates or annuls it partially. And where the judge, in show, interprets the statute extensively, he makes of its reason a judiciary rule by which its defect is supplied. He makes of the reason of the statute a general ground of decision, which provides for the class of cases overlooked and omitted by the lawgiver. For, as a *ratio decidendi*, though not as a *ratio legis*, the reason of a statute may perform the functions of a law.

VIII. There is, it is true, an extensive or restrictive interpretation, which is properly interpretation or constriction.

(a). For the literal meaning of the words wherein the statute is expressed may not correspond to the purpose wherewith it was actually made; and the interpreter of the statute, guided by another index to the actual purpose of the statute, may abandon the meaning which custom has annexed to the words for the meaning which the lawgiver attached to them.

(b). Now, (1) if the meaning annexed to the words by custom be narrower than the meaning attached to the words by the lawgiver, the interpreter (it is commonly said) interprets the statute extensively; (2) if the customary meaning be broader than the lawgiver's, the interpreter (it is commonly said) interprets the statute restrictively. But, manifestly, the statute itself is not extended or restricted by the process which we are now considering. The very law which actually was made by the lawgiver, is also the very law which is sought and stuck to by the interpreter, who merely proportions the grammatical meaning of the words to the broader or narrower meaning with which the lawgiver used them. The interpreter extends or restricts, not the statute itself, but the literal meaning of the words wherein the statute is expressed.

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RULES OF IN
TERPRETATIO
Para. 36, cont.

APPENDIX XVIII.

ENHANCEMENT AND RECOVERY OF RENT BEFORE 1859.

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The “unearned increment” belongs to somebody. Failing the ryot, it belongs to the Government or to the zemindar. The zemindars very neatly put the argument that it belongs to them, by daily instituting suits for enhancement of rent; while the British Indian Association takes up its parable, yearly, about the sin of Government’s enhancing old taxes in British India or levying new *abwabs*. The Association also put the argument, thus, in its parable about the Public Works Cess in 1877 :—

(a.) “If it be argued that the public demand upon the land being fixed ‘for ever,’ the proprietors of land are best able to bear additional burdens, your memorialists take leave to dispute the correctness of that argument.

(b.) “In the first place, it needs to be borne in mind that the immediate effect of the permanent settlement was the destruction of most of the great families which owned the land, in consequence of the crushing assessment under the permanent settlement, and that if some of the original proprietors have lately improved their position, they have done so at considerable outlay of capital, and after years of toil; trouble, and loss.

(c.) “In the second place the vast majority of the proprietors of the present day have invested their capital at the market rate, in perfect confidence in the promise contained in the proclamation of the permanent settlement. It is well known that at the date of the settlement one-third of Bengal was covered with jungle, and it was the zemindars who, by giving advances to ryots” (at usurious interest), “charging no rent, or small rent, for years” (but levying prohibited cesses outside the small rents), “constructing embankments, excavating tanks, wells, and channels, settling rent-free lands upon village establishments” (who could not be expected to do zemindars’ work for nothing), “and in other ways, reclaimed the land and rendered it productive.”

2. The weakness of the second plea (c) is evident from the quotations in Appendix IV, para. 8, section V, which show that the ryots have done everything, the zemindars nothing, for the extension and improvement of cultivation. Of the cultivation it may be said that it simply “grewed,” like Topsy; nature gave to the population of Bengal a power of increase; Lord Cornwallis gave to the zemindars a monopoly of waste land; and the two gifts amalgamating, cultivation

increased. The outlay of capital by zemindars (Appendix IV, para. 8) was not worth mention. The British Indian Association has itself said in effect that, even had the zemindars been disposed to lay out capital, there was no occasion for it. In the Association's Report dated 12th May 1877, they observed: "The rice-growing lands constituted the bulk of the cultivated area of Bengal, and yielded the crop by the mere scratching of the ground as it were; and as regarded these lands, the dictum that the value of the produce, or the producing power of the land, had been increased by the agency or at the expense of the ryot" (or of the zemindar either), "did not, as a rule, hold good, inasmuch as the sun and periodical rains renovated the soil annually, without any artificial aid, except in rare instances, and the value of the produce was regulated by causes independent of the exertions of the ryot," or of the zemindar.

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—
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—
Para. 5.

3. Stripping (c) of the verbiage in which the do-nothing of the zemindars is spread out, and qualifying it further by the fact of the ryots having done everything, and the zemindars nothing, for improving and extending cultivation, the pleading in (c) is an argument that zemindars should have the unearned increment arising from the enormous millions sterling of additional value of the produce of Bengal, because they have been separately enriched by Lord Cornwallis' unwise, unconstitutional gift to them, of that third of the culturable land of Bengal which was waste in 1793.

4. The other plea is that the permanent settlement laid "a crushing assessment" on the zemindars. This serious charge is brought against Lord Cornwallis by the creations of his weak benevolence; but happily his memory is free from the stain. The charge contains, indeed, its own refutation. If the heaviness of the assessment brought large zemindaries to the hammer, and ruined the defaulters, it should have ruined the purchasers too, inasmuch as the assessment was not reduced on the occasion of the sales. But all who are conversant with the subject are aware that the sales for arrears of revenue were not attributable to the heaviness of the assessment.

5. The most fruitful cause of the sales in the early years after the permanent settlement was Lord Cornwallis' gift of waste lands to the zemindars, which made it their interest to attract ryots from other zemindaries by low rents. The large zemindaries principally defaulted after the permanent settle-

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Para. 5, contd.

ment; and it was in those zemindaries that the collections were farmed out by zemindars to farmers who subjected the ryots to such grievous exactions, that the latter took up waste land in neighbouring zemindaries or in other districts. The reality, the general prevalence of this cause, and its inevitable operation wherever it had become the zemindar's interest to bring into cultivation waste land, on reclaiming which he would not pay to Government rent for the land, are set forth in Appendix XVI, paragraph 43. This cause by itself would explain the sales; but other causes, *viz.*, fraudulent sales and mismanagement, also operated, as will be seen from the following extracts:—

I.—SIR JOHN SHORE (*June 1789*).

The character of the people may have also suggested the necessity of continuing the establishments for recording the mofussil accounts in order to guard against a diminution of the jumma. The terrors of despotism were not always sufficient to enforce the payment of the revenue. Since the arrival of Jaffur Khan in Bengal, one-half the property of the country has, at least, been transferred on account of defalcations. The formation of the zemindaries of Burdwan, Rajshahye, Nuddea, and others, will prove this.

II.—COLLECTOR OF BURDWAN (*27th February 1794*).

Fifth Report.

(a). As far as the Rajah's object can be inferred from his conduct in the late transaction, it appears to have been to embezzle as much as he could of the rents, and leave Government to look to the Ranee for the balance, which would happen in consequence. This would not subject the Ranee to any inconvenience, for being by her sex exempted from imprisonment or coercion of any kind, she would remain undisturbed till the end of the year, while the Rajah, no longer subject to restraint, would be at full liberty to try every means he might think conducive to the reduction of the assessment on the district, which appears to me to have been his aim ever since he entered into his decennial engagement; and should this scheme fail, he might then speculate in regard to any land that might be sold, to release the balance by repurchasing any mehals offered at an advantageous jumma, leaving the rest to the risk of Government, as in the case of Mundulghat, by the exchange of which disadvantageous mehal for the one he at the same time purchased in Bishenpore, he has undoubtedly gained very considerably. This mode of transferring and receiving possession of land may, for anything I know, be perfectly consistent with the public regulations, though it nevertheless appears to me to be an abuse of the inestimable privileges and immunities bestowed on landholders by the British Government, the effects of which mode of abuse have already been experienced in loss of revenue in the instance above mentioned, and in the embarrassments to which it has contributed in Bishenpore.

III.—GOVERNOR-GENERAL IN COUNCIL (27th March 1795).

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(a). Of the balance outstanding in Bengal, about one-half is due from two persons only, *viz.*, the zemindars of Beerbhoom and Rajshahye; and this failure in their payments has originated in causes wholly foreign to the administration of justice, the former having dissipated the public revenue in the most profligate extravagance and debauchery, for which, and at the instance of his own family, process has been instituted to bring him under the regulations of disqualified landholders; and the latter ascribing his balances to his inability to pay the jumma assessed on his estate, in consequence of the difficulties in which he was involved by the misconduct of the late Collector, Mr. Henekell, and of Government having prohibited him from levying certain articles of revenue from the ryots, that, as he states, formed a part of the assets on which his jumma was computed.

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THE ZEMINDA
Para. 5, cont
Fifth Report.
Para. 15.

(b). The preceding facts afford the strongest ground for presuming that, where material difficulties have been experienced in the collection of the rents or revenues, they are to be ascribed chiefly to that mismanagement which has long marked the conduct of the principal zemindars in Bengal. This is an evil the correction of which is to be looked for only from time, and the operation of the principles of the regulations, which, whilst they protect the landholders in their just rights, leave them to suffer the consequences of mismanagement and breach of engagements.

Para. 19.

IV.—SELECT COMMITTEE (1812).

(a). The great proportion which the revenue bore to the produce rendered a correct adjustment indispensable between the portion which was to be sold of a zemindary and that which was not to be sold; for the part of an estate sold might, if over-rated, prove unequal in produce to defray its assessment, the consequence of which would be a loss to the purchaser, terminating in another sale for the recovery of an unavoidable balance, and ultimately obliging the Government either to assume possession of the estate, with its resources reduced below the scale of its assessment, or to render the proprietary right in it worth possessing to a new purchaser, by diminishing its assessment of revenue.

Fifth Report.

(b). By such a transaction the portion of the original estate left with the zemindar would be benefited in the exact proportion in which the assessment had been unequally distributed and over-rated on the part sold, and the Government would thereby be subjected to a permanent loss of revenue in the manner above stated. * *

(c). Deceptions, such as representing as great as possible the produce of the part of the estate distrained for sale, would be unavailing in cases where the whole estate was exposed to sale in one lot; but in the gradual dismemberment of some of the great zemindaries, they appear for a time to have been successfully practised by the confidential servants of the Rajahs of Jessore, Nuddea, Burdwan, and other defaulters of that rank; sometimes with a view to their own emolument, at others to that of their employers, but in all cases with an effect injurious to the revenue of the estate.

(d). The prevalence of these bad practices and the imperfections in the regulations are recognised in the preamble of Regulation VII of

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Para. 5, contd.

1799, which acknowledges that the powers allowed the landholders for enforcing payment of their rents had in some cases been found insufficient, and that the frequent and successive sales of land within the current year had been productive of ill consequences, as well towards the land proprietors and under-tenants, as in their effects on the public interest, in the fixed assessment of the land revenue. It further notices the purchases which it was believed some of the zemindars had made of their own lands in fictitious names, or in the names of their dependants, the object of which was to procure, by the indirect means which have been described, a reduction of the rate of assessment.

V.—MR. A. D. CAMPBELL'S PAPER.

When, besides annulling the engagements with ryots at less than the pergunnah rates, the Government in 1799 conferred on the new purchasers of zemindaries, under the name of auction-purchasers, the power to eject all the cultivators whose engagements were thus annulled, it is not matter of surprise that purchasers of the zemindary tenure preferred buying rather at a public auction than at a private sale, which conferred no such advantages; or that they generally availed themselves of this law to oust from their fields the hereditary cultivators possessing a right to terms independent of them, and to replace them by others dependent on their own will, who consented to higher terms.

VI.—MR. J. MILL (*4th August 1831*).

Q. 3217. Do you apprehend that the permanent settlement was originally fixed at too high a rate? I believe there was great inequality; in some cases it was found very early that the zemindars, without any apparent misconduct on their part, were unable to pay; but those failures were only partial, and I imagine it was only in a small number of cases that it could be considered as excessive at the time of the permanent settlement.

VII.—MR. A. D. CAMPBELL'S PAPER.

(a). It is difficult to trace the precise extent of these sales of the zemindary tenures. From the practice in Bengal of advertising the same zemindary for sale each time any instalment due from it fell into arrear, the total number of zemindaries advertised for sale is falsely augmented, and *occasionally exceeds the entire number in existence*.

(b). Far the greater portion also of the zemindaries advertised for sale is freed from arrear before the sale actually takes place, and therefore the number advertised forms no criterion of the number really sold.

(c). But the actual sales of the zemindary tenure in 1796 and 1797 extended to zemindaries assessed at the large sum of sicca Rs. 14,18,765, and in 1797 and 1798 to others assessed at no less a sum than sicca Rs. 22,74,076, so that in the year 1815 it was estimated that "probably one-third, or rather one-half of the landed property in the province of Bengal, may have been transferred by public sale on account of arrears of revenue."

The remark in the passage quoted at the close of extract (c) proceeded from a misconception by the authorities, in 1815, of the facts stated in extracts (a) and (b) and in sections I to V. The fact that the estates sold at several 'years' purchase of the revenue, was conclusive against the oppressiveness of the assessment.

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Para. 7.

6. It appears from the preceding extracts that—

I.—The statistics were exaggerated, both as to the number of estates sold and the still smaller number of proprietors sold up.

II.—They were also deceptive as to number and amount of sales due to heaviness of assessment, inasmuch as—

(a.) The sales to a large extent were brought about to defraud the revenue; the zemindars surrendering for sale, by wilful default in paying revenue, parts of estates bearing (1) an unduly large proportion of the Government assessment (in which case the distrained portion was sold outright); (2) an unduly small proportion of the assessment (in which case the zemindar bought back this portion *benamée*, or in another name, and then made a fresh default on the remainder to surrender it for sale). The latter was the more prevalent, because the more artful and successful form of fraud; it also exaggerated the number of sales, by requiring two sales for each fraud respecting one alienated or surrendered portion.

(b.) Numerous other sales were brought about by the zemindars, because (1) they conveyed a clear indisputable title to the purchaser, and so were preferred as the form of transfer even for really private sales; (2) they gave the auction purchaser special power to evict ryots; and the zemindar to acquire this power sold portions of his estate for arrears of revenue, only to buy them back *benamée*.

(c.) A large portion of the remaining sales arose from the levy of rack-rents, which drove ryots to waste lands offered to them on other zemindaries at lower rates.

7. Hence it is not the fact that the immediate effect of the permanent settlement was the destruction of most of the great zemindary families in consequence of an alleged crushing assessment under that settlement. Accordingly,

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Sales of estates
for arrears of
revenue in
1797 and 1798.

the Select Committee of 1812 made too sweeping a remark when they wrote in their Fifth Report as follows:—

"The Committee conceive it has now been shown that the great transfer of lauded property by public sale, and the dispossession of zemindars, which were observed to take place in an extreme degree during several years after the conclusion of the permanent settlement of the land revenues, cannot be altogether ascribed to the profligacy, extravagance, and mismanagement of the landholders, but have to a certain extent followed as the unavoidable consequences of defects in the public regulations, combined with inequalities in the assessment, *and with the difficulties, obstructions, and delays with which the many nice distinctions and complex provisions of the new code of regulations were brought into operation among the very numerous, but for the greater part illiterate inhabitants of the Company's provinces, who were required to observe them.*"

S. In this passage the Select Committee overlooked the most fruitful cause of sales of estates from real inability to pay the revenue, which is mentioned in section II (c) of the preceding paragraph, *viz.*, oppression of the ryots. And in the passage in italics the Committee overlooked the consideration of how little the law could restrain zemindars from recovering rent from ryots by seizing their crops, in days when the police were the creatures of the zemindars, and had not the will, even if they had the power, to curb their lawlessness. Respecting the condition of the police, or the state of lawlessness in the principal districts in which sales of land for arrears of revenue occurred, the following information is given in the Appendix to the Fifth Report, *viz.* :—

I.—MIDNAPORE (JUDGE AND MAGISTRATE, MR. II. STRACHEY, 30th January 1802).

(a). I presume to say that those who are not aware of the enormous evil of dacoity throughout Bengal, are those only who have not happened to enquire deeply into, and meditate on, the subject. It is literally true that the lives and property of the ryots are insecure, and, according to the common expression among the natives, that they do not sleep in tranquillity. In Midnapore the foudary business is, comparatively speaking, not very heavy. The convicts are very few, and the calendar seldom, I believe, contains so many trials, or crimes of such enormity, as those of the other districts in this division. Yet are these remarks regarding decoits, in my opinion, applicable to Midnapore, though less so than to other parts of the country of which I have happened to acquire some information.

(b). Dacoits do not now often assemble in large bodies and set the Magistrate at defiance. They lie concealed, come about the court, intrigue with the lower officers or with the jailor, ascertain the probability of detection, conviction, and punishment, what sort of evidence may be requisite to disprove facts, and so on. In short, the country is infested with robbers and villains who know how to elude the law.

II.—CALCUTTA COURT OF CIRCUIT, 2ND SESSION, 1802 (Mr. H. Strachey).

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(a). The crime of dacoity, or robbery in gangs, consisting of from ten or fifty, sometimes above a hundred, prevails throughout this division, and I imagine throughout Bengal, to an enormous extent. The crime has, I believe, increased greatly since the British administration of justice, and I know not that it has yet diminished. * *

SALUS OF
ESTATES NOT
THOUGHT ABOUT
BY PASSIVE
OPPOSITION OF
RYOTS.

Para. 8, contd.

(b). It must not be supposed that dacoity prevails in the district of Midnapore to a greater extent than in other districts of this division; on the contrary, I think there is less, except perhaps in Beerbhoom. In Burdwan there is certainly three or four times as much. The Midnapore reports I mention only because they were made under my own eye, and I am satisfied of their accuracy. Moreover, they agree with my own observation at Jessore and other places. * * The Nizamut Adawlut know very well the nature of dacoity, and must be aware of the misery of the individuals whose persons and property are attacked by them. This the Court know, since the worst cases are submitted to their revision. But I am not sure that they have an adequate idea of the extent to which dacoity prevails. * *

III.—RAJSHAHYE DIVISION (Mr. E. Strachey)—13th June 1808.

(a). The principal persons who have lands or farms in the northern parts of this district, where there are most dacoits, are the fouzdary serishtadar Unoopender Narain, and the peshkar Ruheemooden, Kishen Sundial, a dewany mohurir, and Domun Geer Goseya and Anoop Moonshee, who hold no offices under Government.

(b). There is evidently a connection of interests between Domun Geer Goseya and the two fouzdary officers, who farm lands together and mutually support each other. Anoop Moonshee, again, is connected with Kishen Sundial and with one Radamohun Ghose, a serishtah vakeel, who appears to be a very considerable person here. Most of the police darogahs seem to be under the influence of Ruheemooden. Anoop Moonshee and Domun Geer accuse each other of harbouring dacoits; and there is every reason to believe they are both guilty, for a great many notorious dacoits, and harbourers of dacoits, live on their estates, as well on Ruheemooden's and Unoopender Narain's and Kishen Sundial's, although it is not easy to apprehend them, or, if they are apprehended, to convict them. The magistrate here has so much to do, *that a great deal of important business is necessarily left to the principal amlah, that is, to the serishtadar, and Ruheemooden.*

(c). It rests with them to bring forward whatever appears to be most pressing, and the magistrate always allows them to give their opinions on the cases before him. Now, it appears to me that if matters of consequence are unwarrantably kept back, and if criminals are improperly released, great responsibility should attach to these officers; for it is quite out of the question to suppose that, as far as the magistrate is concerned, these errors proceed from anything but inadvertency. But if there are very serious charges against these men and their dependents, for all sorts of oppression and violence, and for using the power and influence of their official stations to tyrannise

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ESTATES NOT
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—

Para. 8, contd.

nize with impunity, and to suppress complaints and prevent their being brought to decision, I think it must be admitted that they ought not to be allowed to retain their situations. I have lately sent an order to the magistrate to bring to decision, without delay, seven complaints of this nature, all very serious, and most of them bearing the strongest appearance of truth. The complainants had been twice to the Court of Circuit and once to the Nizamut Adawlut, and the magistrate, whenever they came, ordered the cases to be brought forward, yet they were not brought forward. * *

(d). The fouzday serishtadar, with his Rs. 60 a month, and the peshkar, with his Rs. 40, have contrived to possess themselves of great landed property in this district; from their connections with zemindars and their official situations, they have acquired a degree of power and influence which they turn to the worst purposes. I am persuaded that they derive a revenue from the dacoits, and give them protection; and that they suppress complaints which are brought against themselves or their dependents.

(e). It seems to be a prevailing opinion that the state of society in Bengal, owing to the reduction of the great families and the division of estates, is now such as to be unable to afford assistance to the police. That this opinion is erroneous, I entertain not the smallest doubt. Consider who are the chief persons of power and influence in the country, and how perfectly they are at the mercy of Government,—how closely within its reach. These persons are the principal native officers of Government and the zemindars and farmers; under their immediate authority are the inferior native officers of Government and their dependants, and the naibs of the zemindars and farmers; under them, again, are the gomashtha and thannadars and different officers belonging to the cutcherry, and the munduls, poramanicks, and pykes of villages. Large estates are managed chiefly by naibs in the mofussil, and the small estates by the proprietors themselves.

(f). Large towns, which are, I believe, very seldom the residence of dacoits, are the only places where there are many independent men. Throughout the rest of the country, the great body of the people are subject to the power and influence of a few individuals; no objection can arise from the vast number of independent talookdars. I know that the dacoits generally do not live on their estates. Indeed, he who carries desolation into the neighbouring lands cannot be expected to hold an undisturbed residence on the estate of a man who is unable to protect him. I should have no concern about the estates of petty talookdars. Dacoits may be there sometimes, but not often; and if they can be rooted out of the great estates, there will soon be an end of them.

(g). The connection of dependence from the zemindars and the officers of Government to the lowest of the people, is as general and as perfect as can be conceived. Government and natural authority is strong throughout; the superior is in the daily exercise of authority over the inferior, by calls on his personal services or his property. If this authority is exercised in moderation and according to usage, we hear nothing of it; when it is excessive, it frequently appears in our courts. When a darogah gives a detailed account of his proceedings to apprehend dacoits, he almost invariably speaks of his demanding assistance from the zemindar; when

he and his amlah go to a village, they immediately apply to the chief officer of the zemindar; when they find it necessary to apologize for the bad state of the police, they blame the zemindar and his officers. I scarcely know an instance of any other reason being assigned. Again, every zemindar has at the thanna a vakeel or a pyke, or, some sort of agent. This man generally acts as a *goindah* also; he is often the confidential agent of the zemindar, of the police officers, and of the dacoits. The effects of this soon appear; that is to say, dacoity begins. * *

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—
Para. 10.

(L.) I think it is impossible to doubt that the dacoits are protected by the zemindars or their dependants, by the police officers and their agents at their thannas, and by the persons who have power and influence at the magistrate's cutcherry. When I speak of protection, I mean to include in the expression every sort of connivance and neglect by which dacoits are enabled to live unmolested and carry on their profession.

9. Thus, lawless zemindars needed not law's help to seize ryots' crops. Law was powerless to restrain them from worse crime than that; and its officers helped them in wrong. Yet it was averred that (such is the majesty of law!) defaulting ryots arrested the zemindar's arm by referring him to the civil courts, and sold their crops before his face. On these slender grounds, Regulation VII of 1799 was passed. The zemindars of that day needed it not, unless to legalise wrong. Wolves pretended that a combination among sheep was overpowering them; and law sharpened their fangs that they might rend the sheep in ease and security; for had not ryots, terror-stricken by harbourers of dacoits, fiercely borne down great zemindary families?

10. The Government was not ignorant, but merely sentimental. In a Revenue letter from Bengal, the Government reported on 23rd September 1798:—

Parl. Papers,
Sept. 1821-32,
Vol. XI, app.
31.

(a). We propose also to adopt measures for enabling the landholders to recover their demands on their tenants with greater facility and expedition than the present rules for distraining for arrears admit. In framing these rules, we shall *of course be careful* not to deprive the cultivators who pay their rents with punctuality of that security against exaction and oppression which they now derive from the existing regulations.

(b). It is by no means, however, our opinion that the arrears due on account of the past year from the zemindars are to be ascribed generally to the insufficiency of their powers to collect their rents; although we think it equitable to combine, with the more summary mode of collecting the public revenue which we have in contemplation to adopt, every facility which can be given to the zemindars in realising their rents consistently with the just rights of their tenants.

And, thus, the Huftum Regulation was passed, under an avowed conviction that it was really not wanted, but that it would look well to give to the zemindar the same power as

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REGULATION.

Para. 10, contd.

the Government would assert over him. It was overlooked that the one who did not need the power was wolfish. The result was that the zemindar of a later day turned the new law into an engine of high-handed oppression, in the name of the security of the public revenue.

11. But if law was weak, and legislators were beguiled by sentiment, yet the ancient custom of established pergunnah rates and of the ryot's hereditary right of occupancy was strong; and zemindars, unenlightened by Sir Barnes Peacock, and therefore not dreaming that ryots had become mere tenants-at-will under the permanent settlement, needed hutlum and punjum, and all the devices, during sixty years of tyranny, oppression, forgery, deceit, and fraud, to break that right, and to obliterate that pergunnah rate, under sanction of the cold, selfish *principle* (forsooth!) that almost anything might be allowed to be done by the zemindar, if it was alleged to be required for the security of the public revenue.

12. The status of the zemindars of 1793, as they knew it, was different from that subsequently imagined by Sir Barnes Peacock. There was some method in the Regulations of 1793-94 and of 1795 which form the deeds of the permanent settlements of Bengal and Benares respectively. In these rules one regulation (with sometimes a supplement) was devoted to each subject, *viz.* :—

	Bengal.	Benares.
Proclamation to proprietors, and fixing of the Government demand ...	I of 1793	I & XXVII of 1795
Settlement:—Regulations of the decennial and of Mr. Duncan, respectively, including pottah regulations ...	VIII of 1793 } IV of 1794 }	II of 1795
Recovery of arrears of revenue	XIV of 1793 } III of 1794 }	VI of 1795
Limitation of term of lease ...	XLIV of 1793	L of 1795
Formation and continuance of quinquennial registers ...	XLVIII 1793	XIX of 1795

13. In logical order, the regulations should have begun by defining the proprietors of land. The definition was supplied for Bengal and Benares, respectively, in the following Regulations :—

I.—BENGAL (*Regulation III of 1794, section 2*).

Every proprietor of land (which term, whenever it occurs in any regulation, is to be considered to include zemindars, independent talukdars,

Status of the
zemindars of
1793.

and all actual proprietors of land who pay the revenue assessed upon their estates immediately to Government, &c., &c.

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XVIII.

II.—BENARES (*Regulation XXVII of 1795, section 10*).

STATUS OF THE
ZEMINDARS OF
1793.

Para. 14.

For the sake of precision, it is hereby declared that, wherever the term proprietor or actual proprietor of any taluk, zemindary, village, or other land paying revenue to Government is, or may be, used in this or any other regulation extending to the province of Benares, and printed and published in the manner prescribed in Regulation LXI, 1793, such term is to be considered as applying to the person or persons holding under each separate lease or pottah from Government (*whether he or they possess the entire proprietary right in such lands, or shall only be principal among other pattidars, distinct or common*), whose name or names standing inserted in such pottahs, and who, having executed the counter-part kabuliuts, has or have thereby become immediately responsible to Government, as well for the payment of the revenue, as for the performance of the other stipulations and conditions contained in the quartennial and decennial deeds of settlement; without, however, affecting or prejudicing the rights, distinct or common, of any pattidars or sharers, where any such shall exist, and which, in case of dispute with the pottadars or holders of the pottahs, are to be determined by the Courts of Adawlat according to what shall be ascertained to be the respective rights of the parties agreeably to the principles of justice, and the laws, customs, and usages of the district, as referred to in (Settlement) Regulation II, 1795, as far as regards the parties in question.

14. Here we note—

I. The policy of Government changes; but, however changeful, it never was so fleeting and immoral as that “the principles of justice, and adherence to the laws, customs, and usages of the district,” which were accepted in 1795 as dominating over the legislation of that year in regard to existent rights of property, could have been repudiated by the Government, which dealt with the same subject two years previously in a spirit of milk-and-watery benevolence. The legislators of 1793 did not intend, and they had not the power, to destroy the rights of millions of cultivating proprietors which depended on custom. The intention to uphold those rights was expressed in the reference to the civil courts of all matters affecting them.

II. Down to the time of the decennial settlement, the only way in which rights could grow up was through custom, the ever-surviving law of the East. The Mahomedan rulers did not interfere with this custom—the only occasions which brought them into contact with rights in landed property created by custom were those of collecting revenue from

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STATUS OF THE
ZEMINDARS OF
1793.

Para. 11, contd.

their subjects, and on these occasions they collected according to established custom; and they collected through comparatively few officials, whom they set over provinces, districts, zemindaries, without expropriating the actual proprietors, whose title was derived from a custom more ancient than law. It were absurd, therefore, to suppose that at the date of the settlement there were no proprietors of land throughout the vast provinces of Bengal, Behar, and Orissa, other than those who paid revenue direct to Government, under arrangements handed over by a native rule, which had always collected through officers, who were necessarily very much fewer by far than the millions whose rights, as cultivating proprietors in a country wonderfully tenacious of custom, were patent throughout the land as the custom and tradition of centuries. When, therefore, the Government of 1789 and 1793 declared that only those who paid revenue to Government were the actual proprietors of the land, the declaration was, on the face of it, a mere legal fiction.

III. The fiction was adopted for convenience of collecting the land revenue, and for enabling a hereditary succession to zemindaries (see Appendix XVIII, para. 14); and the Government was careful to declare that they were creating a fiction, for they averred that the proprietorship of the land was being *vested* for the *first time* (compare with Appendix XVI, para. 37) in the ostensible payers of revenue, who were the only persons recorded in the Government books as proprietors; and, on 27th March 1795, it was explicitly stated that the fiction was not to prejudice any real proprietor, who paid revenue to Government through the ostensible payers of that revenue to the collector. It was also stated, in section 16, Regulation II of 1795, that "the new pottahs were meant only to fix the rental" (*i. e.*, the pottah was a mere record of the rent payable by the ryot, Appendix XVI, para. 3, sec. III, and para. 9, sec. III), "and in no wise to constitute a bar to the recovery of any proprietary right in land, for which suits might be instituted in the Mulki Adawlat in the same manner as if no such pottahs had been granted."

IV. The real proprietors are those described in the passage in italics in extract II in para. 13. They were the various members of village communities. The corresponding classes in Bengal were the dependent talukdars and resident cultivators of villages, or members of the disintegrated village communities in Bengal. These were

protected from disturbance in their possessions, and from increase of their rent above the ancient established pergunnah rate. Protected in these the substance of their proprietary rights, they were in appearance not affected by the legal fiction of treating as proprietors only the payers of revenue to Government. The proprietary rights of the cultivators in Bengal as set forth in other appendices, were identical with those of members of the village communities in Benares and the North-Western Provinces; the only real difference was in the good fortune of the members of the village communities, whose individual rights were recorded by Government officers, while the permanent settlement relegated the corresponding class in Bengal to zemindars, who were to supply the record of right in the form of pottahs, which they were required to grant to the ryots.

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XVIII.

DEPENDENT
TALUKDARS.

Para. 15.

15. The dependent talukdars in Bengal and Behar were thus described by Sir John Shore and Lord Cornwallis:—

Dependent
talukdars.

I.—SIR JOHN SHORE (*Minute, 2nd April 1788*).

(1). The word '*talukdar*' means the holder or possessor of a dependency. The tenures held by persons of this description are dispersed over the whole country, and are too various to be minutely ascertained. The principal distinction in the rights of talukdars arises from the privilege which they may possess of paying their rents immediately at the khalsa, or exehequer, instead of to the zemindars, from whose authority they are wholly exempt, being immediately subordinate to that of the Government. Talukdars of this description differ but little from zemindars, except in the limited extent of territorial jurisdiction. They are all equally bound in the performance of the same services and the payment of rents. *Lately, they have, with them, been made subject to an enhancement of their rents; but this I understand to be contrary to more regular practice and usage.*

Extracts from
Harington's
Analysis of
Regulations,
page 27.

The passage in italics shows that the demand upon talukdars, like that upon ryots, was for an amount fixed according to established custom, and was not liable to increase during the periodical revisions, when, without disturbing the customary rate for ryots, zemindars were taxed for waste land reclaimed since the last revision. As the talukdars and ryots really held direct from Government, their proprietary rights were identical.

(2). These taluks, in general, appear to have been originally portions of zemindaries sold or given by the zemindars, and to have been separated from their jurisdiction, either with their consent or by the interest of the talukdars with the governing power. Some may perhaps have been conferred by the special authority of the dewan or nazim, in default of legal heirs, or in consequence of the dismissal of

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XVIII.DEPENDENT
TALUKDARS.

Para. 15, contd.

the former talukdars for delinquency. When the separations took place, the rents of the taluks were regulated by the standard of the *tumar*, with an accumulation of subsequent imposts and charges; and this is a reason assigned for the former established practice of limiting the talukdary rents to a fixed sum, not admitting of any increase.

(3). The talukdars, whose lands have not been separated from the zemindary of which they are portions, pay their rents to the zemindars by various rules—some at a fixed rate, consisting of the *tumar jumma*, and an addition for expenses; others are assessed according to the variable demands of the Government upon the zemindar, and pay their proportion of all the charges for which he is answerable. In Behar, the talukdars pay according to the produce of their lands, and enjoy the same allowance which the zemindars themselves possess, of 10 per cent. *malikana*.

(4). Taluks of the description in (3) have chiefly been acquired by purchase, gift, or on condition of cultivating waste or forest lands, and far exceed the proportion of those separated from the zemindary jurisdiction. Some talukdars are little better than ryots, with a right of perpetual occupancy, whilst they discharge their rents agreeably to the terms of their pottahs or leases. It is generally understood, as an universal rule, that taluks ought not to be separated from a zemindary, unless the zemindars should be guilty of oppression or extortion upon the talukdars. The latter are as anxious to obtain the immunity, as the former are strenuous in opposing it; for, exclusive of the diminution of their jurisdiction, they would by this separation lose, what perhaps they have no right to exact, a *rusoom*, or fee, which they generally levy over and above the established rents of the taluks. This, when talukdars are in other respects treated with lenity and justice, is acquiesced in without demur.

(5). All talukdars, unless restricted by the terms of the grants under which they hold, have a right to dispose of their lands by sale, gift, or otherwise, still subject to the same dues to which they themselves were liable; and, indeed, this practice prevails in opposition to the conditions of their pottahs. A zemindar has no power to resume or dispose of the lands of a talukdar.

II.—SIR JOHN SHORE (18th September 1789—first Minute).

There is an apparent analogy between the talukdars in Bengal, situated within the jurisdiction of a principal zemindar, and that of the proprietors of the soil of Behar, in a similar predicament; but in their reciprocal rights, I understand, there exists a material difference. The muskuri talukdars of Bengal are dependent upon the zemindar, and have no right to be separated from him, except by special agreement, or in the case of oppression, or when their taluks existed previously to the zemindary; neither do they possess the right of *malikana* (para. 5).

III.—LORD CORNWALLIS (3rd February 1790).

(a). With respect to the talukdars, I could have wished that they had been separated entirely from the authority of the zemindars, and that they had been allowed to remit the public revenue assessed upon

their lands immediately to the officer of Government, instead of paying it through the zemindar to whose jurisdiction they are subjected. The last clause in the 16th article of Mr. Shore's propositions, which directs that the lands of the talukdars shall be separated from the authority of the zemindars, and their rents, be paid immediately to Government, in the event of the zemindars being convicted of demanding more from them than they ought to pay, will afford them some security from oppression.

(b). When the demand of Government upon the zemindars is fixed, they can have no plea for levying an increase upon the talukdars; for I conceive the talukdars in general to have the same property in the soil as the zemindars, and that the former are to be considered as proprietors of lesser portions of land, paying their revenue to Government through the medium of a larger proprietor, instead of remitting them immediately to the public treasury.

(c). The pernicious consequences which must result from affording to one individual an opportunity of raising the public revenue, assessed upon the lands of another, at his own discretion and for his own advantage, are evident; and, on this account, I was desirous that all proprietors of land, whether zemindars, talukdars, or chowdries, should pay their rents immediately to the European collector of the district, or other officer of Government, and be subject to the same general laws.

(d). In support of this opinion, I have annexed some extracts from the proceedings of the Committee of Circuit, the members of which must have been well acquainted with the customs and practices of the Mogul Government. These extracts afford convincing proofs of the proprietary rights of the inferior zemindary and talukdars; and that their being made to pay their revenue through the superior zemindar of the district was solely for the convenience of the Government, which found it less difficult to collect the rents from one principal zemindar, than from a number of petty proprietors. They further prove that the zemindars who sold their lands to raise money for the liquidation of the public balances, disposed of all the rights which they possessed in them as individuals; and that whatever authority they might exercise over them after the sale, must have been virtually delegated to them by the Government, and not derived from themselves.

IV.—COMMITTEE OF CIRCUIT, MR. H. MIDDLETON (*11th July 1772*).

From time immemorial it has been customary for the zemindars, on falling in arrears in the payment of their rents, to raise a sum of money for that purpose by disposing of a part of their lands, either voluntarily or by compulsion of the Government. These lands sometimes are entirely alienated, and become dependent only on the khalsa, or they are annexed to the domains of another landholder, who purchases them; or they are allowed to continue muskuri, that is, under the jurisdiction of their former zemindar, paying only the tuksimi revenue, with the rate of taxes imposed on the rest of the province.

V.—COMMITTEE OF CIRCUIT (*20th July 1772*).

Resolved also, that the muskuri taluks of Rajshahye be settled upon the same plan, and that, when settled, they do continue

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XVIII.

DEPENDENT
TALUKDARS.

Para. 15, contd.

APP. XVIII. their rents as formerly, through the channel of the head farmer of the hunda in which they are included, but without his possessing any other claim upon them or their lands except that of receiving the rents.

DEPENDENT
TALUKDARS.

Para. 16, contd.

VI.—REGULATION XLIV OF 1793.

Section VII.—The revenue payable by such dependent talukdars as were exempted from any increase of assessment at the forming of the decennial settlement, in virtue of the prohibition contained in clause I, section 51, Regulation VIII, 1793, is declared fixed for ever, and their lands are accordingly to be rated at such fixed assessment in all divisions of the estate in which their taluks are included.

These extracts establish that dependent talukdars were proprietors in their own right, independently of their zemindars.

16. Turning, now, to the series of regulations enumerated in paragraph 12, it appears that—

I. The first in order of dates were the Regulations of the decennial settlement, VIII of 1793, supplemented by IV of 1794. The persons having an interest in the land mentioned in this regulation are—

(a). “Actual proprietors” (definition in paragraph 14, sections II and III), of whatever denomination, whether zemindars, talukdars, or chowdries; also farmers, in temporary substitution for displaced zemindars.

(b). Dependent talukdars.

(c). Under-farmers, and such talukdars as are mere lease-holders only, through their holding under instruments which do not expressly¹ transfer the property in the soil, but only entitle the talukdar to possession so long as he continues to discharge the rent, or perform the conditions stipulated therein.

(d). Khoodkasht ryots, or those holding under rule or custom.

(e). Ryots under temporary leases made previous to the conclusion of the permanent settlement.

II. Class (c) in the preceding detail held from the zemindar; the writings under which men of that class held are called leases in the regulation. The zemindar was empowered to let, that is on lease, to under-farmers or others above the ryots, all his zemindary, if he liked, except the part forming a dependent taluk. Class (e) also held under leases, but on

¹ This clearly implies that class (b) were real proprietors.

expiration of the lease, the ryots were entitled to demand renewal at the customary pergunnah rates.

III. Classes (b) and (d) held independently of the zemindar, and were treated in the regulations as holding independently. The term "engagement" is uniformly applied throughout the regulation to agreements for the Government revenue, whether of the Government with the zemindar, or by the dependent talukdar with him, or by the ryot. That is, the engagements by the dependent talukdar and the ryot were really with the Government, the same as the zemindar's engagement. This distinction between "engagement" and "lease" is preserved in the regulation—the former in favour of the two classes (b) and (d), which held independently of the zemindar, whilst the latter was applied to those classes (c and e) who held from the zemindar.

IV. The writing which defined the right of the resident ryot is in the regulation termed pottah, which term was also employed in the corresponding regulation of 1795 to denote the instrument under which the dependent talukdar held in the permanently settled province of Benares; also in Regulation VIII of 1793, section XIX, dependent talukdars are referred to as "pottah talukdars."

V. In the Glossary appended to the Fifth Report, the pottah is described as "a lease granted to the cultivator on the part of Government, either written on paper, or engraved with a style on the leaf of the fan palmyra tree, by Europeans called *cadjan*." In this connection it is interesting to note that in Wilson's Glossary "PAITHA," corruptly, "*pytha*," is described as "a district revenue account, in which the several fields of the villages, whether paying revenue or exempt, are specified under the names of their respective occupants, according to their extent, quality, and produce." The "*pytha*" was a Government account of the ryot's holding; the "pottah" was the document given on the part of Government, showing the amount payable by the ryot.

VI. Thus Regulation VIII of 1793 clearly distinguished three classes, *viz.*,—*1st*, those (proprietors by a legal fiction) who paid to Government the revenue due from the real proprietors of lands; *2nd*, the real proprietors; *3rd*, temporary interests, whether of farmers or pykashit ryots, derived from the zemindar under lease.

VII. In the proclamation of a permanent settlement, the Government was concerned with the first two classes, and mainly with the first; accordingly, the proclamation of

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CLASSES HOLD-
ING INDEPEND-
ENTLY OF
ZEMINDARS.

Para. 16, contd.

APP. XVIII. 22nd March 1793 (Regulation I) was addressed to "zemindars, independent talukdars, and other actual proprietors of land," *i.e.*, to those constituted trustees of the real proprietors; while the real proprietors implicated in the trust were also mentioned as "dependent talukdars and ryots:" the third class was not noticed.

CLASSES HOLD-
ING INDEPEND-
ENTLY OF
ZEMINDARS.

para. 18, contd.

17. In this three-fold division of zemindars (or proprietors in the Government's share), real proprietors (*viz.*, dependent talukdars and ryots), and lease-holders (or, practically, tenants-at-will), the resident cultivators were carefully distinguished from tenants-at-will, and were not merged in the latter class, as held by Sir Barnes Peacock. This distinction was also carefully observed in other regulations, which may be noticed as follows; though their introduction in this place slightly anticipates an account of the progress of legislation respecting the rent payable by ryots.

I.—REGULATION VIII, 1793.

(a). *Section LI* secures the estate or land of a dependent talukdar in a zemindary from increase of rent.

(b). *Section LII*.—The zemindar or other actual proprietor of land is to let the remaining lands of his zemindary or estate, under the prescribed restrictions, in whatever manner he may think proper; but every engagement contracted with under-farmers¹ shall be specific as to the amount and conditions of it; and all sums received by any actual proprietor of land, or any farmer of land, of whatever description, over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted, and be repaid with a penalty of double the amount.

The persons mentioned in this section are zemindars and under-farmers. The *letting* by the zemindar referred, therefore, to leases to the under-farmers; and, accordingly, this section did not empower the zemindar to levy any rent he liked from the ryots. Yet such discretionary power in dictating the ryot's rent was inferred from this section by Mr. Justice Phear in his judgment on the great rent case; though the intent of the section was to guard against the tendency to oppression of the ryot which is inherent in the farming of rents, and though Regulation VIII of 1793 explicitly restrains the zemindar from taking more than the customary pergunnah rate from any class of ryots. The only reference to the ryot, in section LII, is in the injunction that the under-farmer should, in the ryot's engagement with him, enter the specific amount of rent payable by the latter.

¹ *i. e.*, the ryot's engagement with the under-farmer.

What that amount should be, was determined in other sections of the regulation, which fixed the customary pergunnah rate as a maximum.

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LEASES DISTINGUISHED FROM
POTTABS.

Para. 19.

II.—REGULATION XLIV OF 1793.

(a). *Section II.*—No zemindar, &c., shall dispose of a dependent taluk to be held at the same or any other jumma, or fix at any amount the jumma of an existing dependent¹ taluk, for a term exceeding ten years, nor let² any lands in farm, nor grant *pottabs*³ to ryots or other persons for the cultivation of lands, for a term exceeding ten years; * * nor renew any such engagement, lease, or pottah at any period before the expiration of it, excepting in the last year, &c.; * * and every engagement fixing the jumma of a dependent talukdar, and every lease or pottah which has been or may be concluded or granted in opposition to such prohibition, is declared null and void.

(b). *Section III.*—But the sharers shall not demand from the dependent talukdars, under-farmers, or ryots, in their respective shares any sum beyond the amount specified in the engagement, lease, or pottah, which may have been entered into between them and the proprietors, &c., &c.

(c). *Section IV.*—The person or persons to whom the lands shall be so transferred, or may devolve, shall not demand from the dependent talukdars, under-farmers, or ryots in the lands transferred any sum beyond payment of the amount specified in the lease, pottah, or other engagement for the rent or revenue, which may have been entered into between them and the former proprietors, &c.

II.—REGULATION L, 1795.

Sections III and IV.—Rules for Benares, the same as those set forth for Bengal in I (a), (b), (c).

18. In these regulations, the “engagements” spoken of were those with dependent talukdars; “leases” were those with farmers and under-farmers; and “pottabs” were those granted to ryots.

19. In the supplemental regulations which followed, the term “leases” was necessarily used in the same restricted sense as in the preceding regulations. The leases mentioned in Regulation IV of 1793, section 2, were those to under-farmers. Regulation V of 1812 rescinded the portion of that second section relating to leases only, and declared “proprietors of lands competent to grant leases for any period which they may deem most convenient to themselves and tenants, and most conducive to the improvement of their estates.” The leases here spoken of included those of the patnidars and dur-patnidars, more specifically mentioned afterwards in Regulation VIII of 1819; and the latitude given to zemindars had regard only to the period of such leases—not to the

¹ Engagement.

² Lease.

³ Pottah.

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—
ASHES DISTIN-
GUISHED FROM
POTTANS.
—
Para. 19, contd.

amount of rent. Hence, in September following, Regulation XVIII of 1812 was passed, (a) to remove doubts which had arisen in the construction of section II, Regulation V of 1812, and (b) to rescind sections 3 and 4 of Regulation XLIV of 1793, and sections III and IV of Regulation I of 1795. The parts of Regulations of 1793 and 1795 rescinded were those only which related to leases of under-farmers; and the part of Regulation V of 1812 interpreted in this Regulation, XVIII, also referred only to the same leases. Accordingly, when Regulation XVIII of 1812, in explaining section 2, Regulation V of 1812, declared that proprietors of land were "competent to grant leases for any period, even to perpetuity, and at any rent which they might deem conducive to their interests," the power (whatever that might be) conferred thereby on zemindars was simply that of settling the period and amount of lease with any tenant desirous of holding between the zemindar and ryot. The status and rent of the ryot were unaffected by that regulation. There was reason for the distinction; the lease to a middleman was for an area of ground, including waste land, in respect of which the increased income from reclaiming waste would be a matter of bargain between zemindar and middleman, whilst there was no room for discretion or bargain as to the highest rent from a ryot, that being limited by custom to the established pergunnah rate as a maximum.

20. Under the several regulations of 1793, which, together, form the deed of the permanent settlement, zemindars were restrained from levying more than the established customary rate from any ryot. For perpetuating that rate, the faith of Government was as solemnly pledged to the ryot as, by other parts of the deed, it was pledged to the zemindar. The Government was not competent to recede from this pledge, any more than it could break its engagement with the zemindar. Accordingly, it was not open to the Government, by subsequent subsidiary or supplemental regulations, to empower zemindars to levy any rent higher than the established pergunnah rate of 1793.

21. Nor do we find that the least deviation was countenanced in any regulation supplemental to those of 1793, which form the deed of settlement. Rent, according to the established rate or usage of the pergunnah, for lands of the same quality and description, was prescribed (Regulation IV of 1794) as that payable by all ryots who were entitled to demand pottahs, either in the first instance, in 1793, or on renewal,

later, of pottahs which had to be limited in the first instance to ten years, under Regulation XLIV of 1793, or which under that regulation stood cancelled on the sale of an estate for arrears of revenue. It was also prescribed as the rate leviable (in the absence of any engagement) from ryots on any attached estate which the Revenue Department might take charge of, on default for revenue, or under a decree of court (*Regulation XIV of 1793, section 6, and XLV of 1793, section 7*).

22. It has been erroneously held that a different form of expression was adopted nineteen years later, when Regulation XVIII of 1812 empowered zemindars to grant leases for any period "and at any rent which they might deem conducive to their interests;" but this was the identical form of expression which in Regulation VIII of 1819, section III, clause *second*, was employed to describe the rent payable by middlemen. This permission manifestly referred to leases to under-farmers only (paras. 18 and 19), and, moreover, the power conferred was that, virtually, of letting at reduced rates; for it was only that power which the rescinded clause of Regulation XLIV of 1793, now revived by Regulation XVIII of 1812, had withdrawn from zemindars. The reduction of the middleman's rent implied the reverse of any necessity for raising the ryot's rent; and the dissimilar, incongruous, contradictory purposes of empowering the zemindar to reduce the middleman's and to raise the ryot's rents were clearly not expressed in a simple declaration of the zemindar's competency to grant leases to farmers at any rent that pleased him.

23. I. It has also been held that Regulation V of 1812 reduced the status of ryots to that of tenants-at-will, by releasing zemindars from the obligation to grant pottahs in a form approved by the collector, and by declaring that—

(a). The proprietors of land shall, henceforward, be considered competent to grant leases to their dependent talukdars, under-farmers, and ryots, and to receive correspondent engagements for the payment of rent from each of those classes, or any other classes of tenants, according to such form as the contracting parties may deem most convenient and most conducive to their respective interests:

(b). Provided, however, that nothing herein contained shall be construed to sanction or legalise the imposition of arbitrary or indefinite cesses, whether under the denomination of *abwab*, *muthote*, or any other denomination. All stipulations or reservations of that nature shall be adjudged by the courts of judicature to be null and void; but the courts shall, notwithstanding, maintain and give effect to the definite clauses of the engagements contracted for between the parties, or, in other

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REGULATION V.
OF 1812 WRONG-
LY INTERPRETED
TO RYOT'S PRE-
JUDICE.

Para. 23, contd.

words, enforce payment of such sums as may have been specifically agreed upon between them (*Section III*).

II. In the first place, as pointed out by the Court of Directors in 1821 (Appendix X, para. 1, IV*b*) and by Mr. Justice Morgan, in the great rent case, "these Regulations of 1812 were no part or condition of the permanent settlement." Next, a close examination of the extract shows that the hastily accepted interpretation of it is not the correct one. From the first clause of the extract it appears that the traditions of 1793 had become faint, inasmuch as the pot-tahs to ryots were termed leases; but the clause affirmed nothing about the rate of rent. The second clause simply repeated the option allowed by the Regulation of 1793 to zemindar and ryot to agree for a fixed rate, irrespective of the kind of produce (Appendix XVI, para. 17); it did not abrogate the provisions of previous regulations regarding the obligatory established rate, that is, the rate which was imperative failing an optional rate to be determined by mutual agreement. Such optional rate between zemindar and ryot, in a time past when there was plenty of waste land, would perforce be less than the pergunnah rate. Instead of Regulation V of 1812 abrogating the pergunnah rate, other sections of it provided rules for approximating to the established rate in parts of the country where the pergunnah rates had become uncertain;—and, furthermore, the prohibition of *abwabs* and *muthotes*, that is, of cesses or levies in excess of customary rates, implied observance of those rates.

III. The law, in fact, still held to the rule of the established pergunnah rate; but as the zemindars had obliterated the pergunnah rate in some parts of the country, the legislature had to fall back on expedients which still kept any new adjusted rate within amounts known to prevail in adjacent lands, or to have been paid within the past three years on the particular land concerned;—and it had to depend on the further expedient, as in 1793, of leaving the zemindar and the ryot to come to a special agreement, at the option of the ryot, no less than of the zemindar. In all this the principle of enhancement of rent beyond the customary rates was not countenanced; and if there was any deviation from the terms by which the Regulations of 1793 had designed an adherence to the established customary rates, then, as the zemindars' considerable invasion, by 1812, of the rights and property of the ryots had necessitated these differences in expression, they cannot be interpreted

as modifying the permanent status of the ryot under the Regulations of 1793, which were designed as a permanent deed of settlement with the ryot, equally as with the zemindar. Learned judges of the High Court will not interpret the law so as to allow a zemindar to profit by his own wrong, when another interpretation, more natural and more consistent with the permanent rules of the permanent settlement, is open to them.

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24. After another ten years, Regulation XI of 22nd November 1822 was passed, to correct alleged defects in previous regulations; "inasmuch as they do not * * * define with sufficient precision and accuracy the nature of the interest and title conveyed to the persons purchasing estates so sold for the recovery of arrears of revenue." It was declared that the purchaser was not entitled to—

Pergunnah rates
confirmed by
Sale Laws.

(a). Disturb the possession of any village zemindar, pattidar, mo-fussil talukdar, or other person having an hereditary transferable property in the land, or in the rents thereof, not being one of the proprietors, party to the engagement of settlement, or his representative.

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(b). Eject a khodkasht ryot, kudimi ryot, or resident and hereditary cultivator, having a prescriptive right of occupaney.

(c). Demand a higher rate of rent from an under-tenant of either of the above descriptions than was receivable by the former malguzar, saving and except in cases in which such under-tenants may have held their lands under engagements stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former malguzars from the old established rates by special favour, or for a consideration, or the like, or in cases in which it may be proved that, according to the custom of the pergunnah, mouzah, or other local division, such under-tenants are liable to be called upon for any new assessment or other demand not interdicted by the regulations of Government.

The classes protected in extracts (a) and (b) are those described in paragraph 6, section III, as the real proprietors recognised in the Regulations of 1793, and the enhancement of rent conditionally allowed in extract (c) was merely from a rent lower than the customary rate to such customary rate. Section XXXIII added that nothing in section 9, Regulation V of 1812, was intended "in any respect to annul or diminish the title of the ryots to hold their land subject to the payment of fixed rents, or rents determinable by fixed rules, according to the law and usage of the country."

25. Act XII of 1841, as generally interpreted, made a serious innovation upon the deed of permanent settlement, or the Regulations of 1793; but if the received interpretation be correct, the Act, as it affected ryots, was *ultra vires*, from

APP. XVIII. the very fact of its being an innovation, and one, too, introduced more than fifty years after the permanent settlement. The new law was rather long-lived, compared with the short life of a law in these days of incessant change of mind, which means consummate wisdom; but, happily, it came to an end. The objectionable provision in the Act of 1841 (to be presently stated) was reproduced in Act I of 1845; and so it remained in force until the repeal of the latter Act by Act XI of 1859. It had force, however, in respect only of those ryots, on estates actually sold for arrears of revenue from 1841 to 1859, against whom zemindars had, before the passing of Act X of 1859, instituted successful suits for the enhancement of rent under the Act of 1841 or of 1845.

26. Act XII of 1841, section 26, prescribed as follows:—

The purchaser of an estate sold under this Act shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled, after notice given under section X, Regulation V of 1812, to enhance at discretion (anything in the existing regulations to the contrary notwithstanding) the rents of all under-tenures in the estate, and to eject all tenants thereof, with the following exceptions:—

A—TENURES—

- 1st*, which were held *istimrari* and *mokurrari* at a fixed rent, more than twelve years before the permanent settlement;
- 2ndly*, which were existing at the time of the decennial settlement, and which have not been, or may not be, proved to be liable to increase of assessment, on the grounds stated in section LI, Regulation VIII of 1793:

B—LANDS—

- 3rdly*, held by *khoddkasht* or *kudimi* ryots, having rights of occupancy at fixed rents, or at rents assessable by fixed rules under the regulations in force.
- 4thly*, held under *bond fide* leases, at fair rents, temporary or perpetual, for the erection of dwelling-houses or manufactories, or for mines, gardens, tanks, canals, places of worship, burying-grounds, clearing of jungle, or like beneficial purposes, such lands continuing to be used for the purposes specified in the leases:

C—FARMS—

- 5thly*, granted in good faith at fair rents, and for specified areas, by a former proprietor, for terms not exceeding twenty years, under written leases registered within a month from their date, and with due notice of full particulars to the collector, who has right to object if the security of the public revenue will be materially affected thereby.

The correspondence and minutes of consultation respecting Act XII of 1841 were published in 1853 in a volume of "Papers regarding the consequence to under-tenures of the sale of an estate for arrears of revenue." It appears from that volume that the proposals for change of the Sale Law, as it stood before the passing of that Act, began in 1833. In a minute dated 10th August 1833 on a new Sale Law proposed by the Board of Revenue, Mr. Ross, Member of Council, observed :—

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In regard to the practice mentioned by the Presidency Sudder Board of Revenue, of defaulting zemindars allowing their estates to be brought to sale for arrears of revenue, and purchasing the estates themselves in a fictitious name,—it is resorted to, I believe, only by zemindars who have recently acquired, and consequently possess, a large proprietary interest in their estates. The main object of the practice is to get rid of existing leases, and to obtain an immediate increase of rental by a fraudulent application of the regulation which annuls the leases of zemindars when their estates are sold for arrears of revenue—a regulation the existence of which not only operates perniciously, by inducing the practice adverted to, but opposes a complete bar to agricultural improvement, by depriving leaseholders of all security in the stability of their leases. This regulation, I think, should be immediately rescinded; and all leases granted by zemindars, and other landholders empowered to grant them, held valid, and not liable to be annulled on any pretext whatever, until adjudged to be collusive by a decree of a court of justice passed in a regular suit. The public revenue would be sufficiently protected against the effects of collusive leases, were such leases, like other fraudulent transactions, left to be dealt with by the courts according to their deserts.

27. The revision of the Sale Law was not effected until eight years later; the proposal of it sprang from a desire to prevent frauds by zemindars; but (such was the seeming devil's luck of zemindars) the actual revision conferred on the purchasers of estates sold for arrears of revenue the power of enhancing "at discretion" the rents of all under-tenures, with the exceptions above stated. This was the result; though, during the whole course of the discussion, the point mainly insisted upon was the expediency of encouraging middlemen, with the view of attracting Europeans and their capital for the improvement of agriculture. The status of these middlemen, and the degree of protection to be afforded to them, engrossed the attention of the Commissioners of Revenue, the Board of Revenue, the Local Government, and the Members of Council, who reported or minuted on the proposed changes of law; the rent payable by ryots was but incidentally men-

tioned, but was in no case discussed. The Indigo Planters' Association did indeed represent that—

the proposed Act for amending the Bengal Code in regard to sales of land for arrears of revenue will, if enacted, practically inflict grievous hardship on the great body of ryots; will subject the ryot to rack-rent, and place him at the mercy of an arbitrary landlord, armed with the oppressive power of ejectment. For no fault of the ryot, but from the mismanagement or improvidence of one landlord, the innocent agriculturists will be liable to be transferred to another, who by the said section acquires the authority, unpossessed by his predecessor, of demanding an exorbitant rent, on pain of ejectment. The tenure by which the ryot and his predecessors have possessed their humble tenement may thus be rudely broken, and rights which have been deemed prescriptive, and which were sanctioned by regulation, be barbarously invaded.

28. I. In section XXVI of the original Bill, as criticised by the Indigo Planters' Association, the class of ryots exempted from enhancement of rent was described thus: "Lands held by khoodkasht or kudimi ryots having rights of occupancy under the regulations in force." Mr. Prinsep, in his minute on the draft Sale Law, observed: "There is an omission in this clause of the words 'at fixed rent,' or 'at rents assessable according to fixed and known rules.'" Accordingly, these words were added to the Act as passed into law.

II. Apparently, this was a contemptuous rebuff to the Planters' Association for its serious remonstrance; but, really, it was not so, for it is probable that the words "rights of occupancy at fixed rents, or at rents assessable according to fixed rules under the regulations in force," were introduced with the object of meeting the criticism of the Association. Evidently the added words covered, in the estimation of the Government of 1841, the mass of ryots, *viz.*, all but those on the *neej* lands or private estate of the zemindar, and non-resident cultivators whose brief sojourn in villages not their own had not yet matured into an occupancy right. If in providing for a change of Law, which had been proposed and discussed in reference only to the middle tenures between zemindar and ryot, the Government did not intend to protect,—as, until then, the Law had protected,—the great body of ryots from enhancement, they would not have used the circumlocutory phraseology above noticed in describing the classes of ryots who were protected. The expressions "fixed rent" and "rent assessable according to fixed and known rules," do cover the rights of all the resident ryots, old and new, who were protected by the Regulations of 1793. It has been sought, by restricting these expressions to kudimi ryots,

to confine their application to the ancient khoodkashts whose tenures date from years before the decennial settlement; but the phrase *kudimi ryot* does not occur in the Regulation of 1793; it was first adopted in Regulation XI of 1822 in defining those rights of ryots which were protected in 1793; but the use for this purpose, in 1822, of a term which designated a class of ryots who were not so designated in the Regulations of 1793, cannot govern the interpretation of other expressions in the laws of 1793, which, without the doubtful help of *kudimi*, do embrace the great body of resident ryots, old and new, who were protected by the Regulations of 1793. Accordingly, the mass of these resident cultivators, old and new, are included in the exemption from enhancement which section 26 of Act XII of 1841 secured for all ryots whose rent was assessable according to fixed and known rules.

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III. Hence, all resident cultivators were exempted from the power given to zemindars in section 26, Act XII of 1841, to enhance at discretion the rents of under-tenures. By this large exception, the power conferred was practically limited to raising the rents of middlemen; and this was in strict keeping with the principle or theory of the Sale Law (Appendix XXI, para. 29, section III). But judge-made law gave to this section of the Act an extended meaning contradictory of the law of 1793, and beyond the purpose of the legislators, who in changing the Sale Law sought only to relax it for middlemen. Mr. H. T. Raikes, Judge of the Sudder Court, observed on 17th June 1858:—

(a). It is well known that the section (XXVI) I allude to has been held by the Courts of law through numerous precedents to apply to ryots and cultivators, as well as to intermediate tenures, with the exception of those generally exempted in the subsequent clauses. * *

(b). I cannot suppose so important a provision of the Sale Law has been overlooked, and I therefore conjecture that the framer of the Bill (of October 1857, for the recovery of rents) has read the 26th section as applying only to intermediate tenures, and considered that allusion to its provisions would be out of place in a Bill declaratory only of the rights of the *cultivators*; but the Courts of law have given a different construction to this section."

The numerous precedents to which Mr. Raikes referred do not appear in the published decisions and Full Bench rulings of the Sudder Court; probably they were decisions of the lower Courts; at any rate, they can hardly be held to have had the force of law, and the stretching thus of the interpretation of section 26 of Act XII of 1841, so as to subvert a fundamental part of the permanent settlement of

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1793, then fifty years old, and in which the faith of Government was as solemnly pledged to the ryot as to the zemindar, outraged the received rules of judicial interpretation (Appendix XVII, para. 36).

IV. The true reading, then, of section 26 of Act XII of 1841 is that the power of enhancing "at discretion" the rents of under-tenures was restricted to the tenures between the zemindar and the cultivator (in the Regulations of 1793, and for long after, the term tenures was restricted in the regulations to these middle interests, and did not include cultivators). According to this reading, there was no disregard of the binding force of the permanent settlement; whilst, according to the ordinary reading, which excludes the mass of ryots from protection under Act XII of 1841, there was an unwarranted departure from the Government's obligations under that settlement, amounting to a breach of its faith, which was as solemnly pledged to the ryot as to the zemindar in 1793.

V. We have seen that, down to 1822, and therefore until 1841, the established customary rate of the pergunnah was the rule of rent for all ryots, except those who could prove their title to a lower rate, in accordance with conditions specified in the Regulation of 1793. But this phrase could not be adopted in the Act of 1841 for limiting the ryot's rent, because, in various parts of the country, the zemindars had obliterated the pergunnah rate. For these cases Regulation V of 1812 had provided rules for determining an approximation to the pergunnah rates; and these rules remained in force until Act X of 1859. Hence, in passing Act XII of 1841, the legislature had recourse to the circumlocutory form of words "fixed rents, or rents assessable according to fixed rules under the regulations in force," for expressing the maximum rent leviable from the great body of ryots described in the preceding paragraph.

VI. Thus, if we understand the third clause of section 26 of Act XII of 1841 to cover, in regard to occupancy rights, the great body of ryots described in para. 16, section I, and para. 24, and to denote the customary pergunnah rates as the maximum rate leviable from ryots, we are able to acquit the zemindars of devil's luck, to exculpate the legislature from a flagrant breach of the faith solemnly pledged to the ryots in 1793, and to rescue the legislators of 1833 to 1841 from the absurdity of having sought a change of the Sale Law for the purpose of circumventing zemindars' fraud, only to revise it with the result of helping zemindars' rapacity.

VII. In short, rightly interpreted, Act XII of 1841 carried out the original purpose, in 1833, of a change in the Sale Law, through clause 5 of its section VI, while in clause 3 of that section it maintained the established *pergunnah* rate as the maximum rate of rent for all ryots, except the tenants-at-will on the private estates of zemindars, and the comparatively few non-resident cultivators whose sojourn in other villages than their own had not matured into an occupancy right. All but this small minority of excepted classes of ryots were, with all privileged dependent talukdars, protected by it from enhancement and from ejectment, if they paid the rates demandable from them within the maximum of the *pergunnah* rate; and, in addition, it protected underfarmers, who held under registered leases for a period not exceeding twenty years.

29. Putting aside this slight addition or exception, the Sale Law of 1841 continued intact the Sale Law of 1793. Under these laws, alike, we find that—

I. Dependent talukdars, whose title to their property was independent of the zemindar, and whose property was affiliated to his zemindary solely for the more convenient collection of the Government revenue, were protected from enhancement or disturbance of any kind, on sale of the zemindary for arrears of revenue. The Government revenue on the dependent taluk was a fixed amount for a definite area of taluk; and as that fixed amount (neither more nor less) had been included, in respect of that particular area of taluk, in the zemindar's engagement with the Government for what he had to pay to Government under the permanent zemindary settlement, perforce that amount was protected from alteration, by way of revision or enhancement, alike on divisions of the zemindary or on its sale for arrears of revenue.

II. The same principle was adopted for the ryot. In the permanent settlement, the zemindar and ryot were to agree as to what amount should be entered in the ryot's pottah as covering the amount demandable from the ryot within the maximum of the ancient established *pergunnah* rate, plus State *abwabs*; for the sum of only these two had provided the average collections of previous years, which determined the amount demandable from the zemindar under his engagement with the Government in the permanent settlement. Accordingly, the customary *pergunnah* rate became the limit to which the ryot's rent could be enhanced on sale of a zemindary for arrears of revenue.

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APP. XVIII. III. Whatever may be the worth of the modern theory respecting "uncarned increment," it is obvious that the theory of the Sale Law from 1793 to 1841 went no farther than this, namely, that, to enable the auction-purchaser to pay the amount of Government revenue which was fixed on the zemindary in 1793, he should be empowered to recover from privileged dependent talukdars the amount of revenue which they paid in 1793, and from ryots the ancient established pergunnah rates. The receipts thus assumed, and the rents from resumed lands and from waste lands reclaimed since 1793, afforded ample means for paying the Government revenue; and, therefore, no ground for enhancement to a greater extent than this was provided by the Sale Laws down to 1841 and 1845, which professed to do no more than to place the auction-purchaser in the position occupied in 1793 by the original engager with Government.

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RATES CON-
TAINED BY SALE
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para. 29, contd.

IV. But while the Sale Laws from 1793 to 1858 furnish no grounds for enhancement beyond the ancient established pergunnah rate of 1793, we may seek in vain for any other regulation or law in or since 1793 to 1858 empowering the zemindar, on any other occasion or pretence whatever, to enhance the ryot's rent beyond the pergunnah rate of 1793, which the regulations of that year directed should be inserted in the pottah, with a specific statement of the consequent amount of rent, as the only amount recoverable thereafter from the ryot, while the regulations, advisedly, did not provide for any after-revision of that amount.

V. The title of the privileged dependent talukdars to their property was independent of the zemindar. Of holders between the zemindar and ryot, who derived from leases given by zemindars, none (with the exception stated in the beginning of this paragraph) were protected under the Sale Laws of 1793 and of 1841, for the obvious reason that, if any such middleman had obtained low rates from the defaulting zemindar, that is, low rates out of which, as paid to the zemindar, he had to pay the Government revenue, what remained to the middleman was an undue portion of the amount paid by the ryot; undue, that is, as containing not only the costs of collection and a fair remuneration for the middleman, but a portion of the zemindar's profit or of the Government's rent. The expediency of a power to the purchasing zemindar of enhancing the middleman's rent was obvious; and the degree or extent of enhancement was necessarily "at the discretion" of the purchasing zemindar. No

other limitation was needed, beyond any which might limit the enhancement of the ryot's rent; for the amount payable by the middleman, or farmer of rent, could only come out of the amount demandable from the ryot.

VI. As to the ryot, section V of Regulation XLV of 1793 restrained the purchasing zemindar from acquiring from any class of ryots whatever anything more than "what the former proprietor would have been entitled to demand according to the established usage and rates of the pergunnah or district in which such lands may be situated, had the engagements so cancelled never existed." This was in accordance with the theory on which the demand against the ryot was limited in the Sale Laws from 1793 to 1858 (sections III and IV of this paragraph).

30. We may now apply these conclusions to the growth of occupancy right. From 1793 to 1858, the law and rule were that from no class of ryots could the zemindar (whether an auction purchaser or other zemindar) recover more than the ancient established rate of the pergunnah,—that is, more than the ancient established rate proper for the *land* occupied by the ryot. The regulations of the permanent settlement of 1793 had established, as a maximum rate, a permanent pergunnah rate of rent for the land included then or thereafter, in each ryot's holding; and they allowed favourable rates as an exception to this permanent rate in favour only of particular classes of ryots, on their proving title to the favour in the manner prescribed in those regulations of 1793. Any ryots not fulfilling the conditions required for those favoured rates were subject to enhancement to the pergunnah rate. Hence, 1stly, the custom under which occupancy right accrued from possession, subject to payment of the established pergunnah rate, was not interrupted by the Sale Laws, any more than by any other law, in the case of those who paid not less than the pergunnah rate of 1793. And 2ndly, if a zemindar neglected to enhance to the pergunnah rate the rent of a ryot who was not entitled to a lesser or favoured rate under the Regulations of 1793, such ryot could acquire a title to exemption from enhancement, under any statute of limitation, except where such title by prescription might be overruled by the Sale Law. The Sale Laws down to that of 1841 did overrule such title as against the purchaser of an estate sold for arrears of revenue. But the Acts XII of 1841 and I of 1845 established, in this regard, an important

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Growth of
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APP. XVIII. change. The first of these Acts rescinded all previous Sale Laws, without reserving rights of enhancement possessed by auction-purchasers under those laws, but not put into force at the date of their repeal. Thus—

—
DORMANT OR
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BEFORE 1815.

ACT XII OF 1841—

para. 30, contd.

It is hereby enacted that section 2, Regulation IV, 1793; Section 2, Regulation III, 1794; Regulation XI, 1822, except sections 36 and 38; and Regulation VII, 1830, are rescinded except in so far as they rescind other regulations or parts of regulations.

And the powers for enhancing rent which the Act conferred were restricted to purchasers "of estates sold under this Act for the recovery of arrears of revenue, &c." In turn, Act I of 1845 repealed Act XII of 1841 without reserving the dormant rights of enhancement of purchasers at sales under the Act of 1841.

31. The effect of this omission, to reserve dormant rights of auction-purchasers under previous Sale Laws, is stated in two decisions of the Privy Council,—in the cases of *Ranee Surnomoyee vs. Maharajah Sutteeschunder Roy* (Weekly Reporter, Privy Council, vol. 2, p. 14) and *Rajah Suttosurum Ghosal vs. Mohesh Chunder Mitter* (Weekly Reporter, Privy Council, vol. XI, p. 10). In both cases the suits of the zemindars who derived from auction-purchasers of a former time, were against hereditary dependent talukdars or putneedars. The earlier judgment, dated 23rd July 1864, in the case of *Ranee Surnomoyee*, who opposed the enhancement of her rent by the Maharajah Sutteeschunder Roy, contained the following deliverance:—

I. The reliance of the respondent (the Maharajah) is on some one of the regulations which have been made at different times in regard to purchases at Government auction sales, in the case of zemindaries from which the Government income has been duly paid. These regulations have been couched in different language, but all with the same policy in view as regards the present question.

II. It has been assumed as the foundation of them, that the default of the zemindar may have been occasioned by improvident grants of taluks and other subordinate tenures at inadequate rents; that this was in breach of the condition on which the fund was originally created by the sovereign power; and the purchaser, therefore, has been set free from the obligation of these grants, with certain specified exceptions, and with certain limitations of his power as to new tenancies to be created.

¹ It is shown in para. 31, section IV¹, and para. 32, section V^a, that the qualified right of enhancement permitted to an auction-purchaser, if allowed by him to lie dormant beyond a reasonable period, became extinct.

III. It would appear from the proceedings of the Court below that it was intended to rest respondent's case on Act I of 1845, which certainly would not have supported it, because the sale relied on was not effected under that Act, and its provisions are limited to sales so effected. Upon the arguments before their Lordships, the counsel for the respondent relied on the fifth section of Regulation XLIV of 1793, which is the earliest of the regulations on this subject, and they contended that, although subsequent regulations have been passed in different language and repealed, this fifth section of Regulation XLIV of 1793 has never been repealed, but was in force at the time when the sale in question was made and this action was commenced.

IV. (a). Whether upon the true construction of all the regulations taken together this particular section ought to be taken to have been repealed or not, their Lordships do not think it necessary to determine. They assume in favour of the respondent that it stands unrepealed and in full force, and will deal with the case upon that footing.

(b). The language of this section is no doubt favourable to the respondent's case. It provides that when a zemindary is sold at a public sale for discharge of arrears due from the proprietors to the Government, all engagements which such proprietors shall have contracted with dependent talukdars whose taluks may be situated in the lands sold, as also all leases to under-farmers, and pottahs to ryots (with the exception of the engagements, pottahs, and leases specified in sections 7 and 8) "shall stand cancelled from the day of sale," &c. * * The respondent contends that by the operation of the words "stand cancelled from the day of sale," the existing interests of the talukdar, *ipso facto*, ceased to exist, without any act done by the purchaser; that it was incapable of confirmation, being set up by him or his successors; and that where, from the acquiescence of the purchaser, or those claiming under him, the possession had remained undisturbed, and the original rent had been received, no matter for how long a period, or through whatever number of mesne conveyances, it still remained a bare possession at the will of the zemindar for the time being, and the rent always liable to enhancement.

(c). In this hard and literal construction of the words cited above, their Lordships do not concur. They think their meaning is properly to be collected from the policy and intent of the regulation, from the language used in other parts of the same section, and from the seventh section which creates an exception out of the provisions of that section. English lawyers are familiar with this principle of construction applied as early as the time of Lord Coke (see Ins. 45) to the disabling Statute of 1st Eliz. c. XIX, s. 5, and in several modern reported cases between landlord and tenant, on clauses or forfeitures in leases; words which make a Bishop's grant "utterly void and of none effect to all intents, constructions, and purposes" have been held not to prevent the grant from being good and binding on the grantor, and in some cases confirmable by the successor; and so a proviso in a lease, that it should be void altogether in case the tenant should neglect to do a certain act, has been held only to make voidable at the option of the landlord. Their Lordships do not cite these as authorities governing this case, but mention them only as illustrating a general principle of construction,

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which, for its justice, reasonableness, and convenience, must be considered of universal application.

(d). In the present case, the object of the Government was that the jumma should be duly paid, and that the means of paying it should not be withdrawn by the improvident grants of the zemindars who had made default; but cases of default might often arise where no improvident grant had been made, where the talukdars and the ryots held at proper rents, and the default was owing to extravagance, mismanagement, or other causes; in such cases the Government cannot be supposed to have intended a wanton and unjust disturbance of vested interests. It is true that the section makes no distinction in terms between the two classes of cases; but the consideration furnishes reason for such limitation, both as to time and extent of operation, as the words will admit (indeed seem to require) in order to give effect to the whole sentence.

(e). Now, looking at what follows in the same clause, it is obvious that no such absolute cancellation was intended, for the power expressly and affirmatively given to the purchaser supposes the talukdars and the ryots to remain in all respects as before, except that they become liable to a certain limited increase of rent, according to the established usages and rates of the pergunnah or district; words in themselves showing that the section was directed to cases in which grants had been made with reservations of rent below those usages and rates.

(f). It is to be observed, also, that in terms this power is given only to the purchaser himself, which would ordinarily suffice to remedy the mischief in contemplation. The language of the exception, too, in section seven shows that what was aimed at by section five was, not the destruction of tenure, but the increase of rent under certain specified and equitable limitations.

(g). The conclusion at which their Lordships have arrived as to the construction of the section is this: that a power was given by it to the purchaser at a Government sale for arrears to avoid the subsisting engagements as to rent, and to increase the rent to that amount at which, according to the established usages and rates of the pergunnah or district, it would have stood had the cancelled engagement so avoided never existed. This gives it a just and reasonable operation, and virtually it would have had none, when the existing rent was already, according to the usages and rate of the pergunnah.

(h). This conclusion is of great importance in the determination of the remaining questions. The sale to Muddoosooden Sundyal (the first auction-purchaser, from whom the respondent derived through three transmissions) according to the respondent's own case, took place some time before 1823, and he found those under whom the appellant claims holding the land at an old rent of Rs. 64-1-6; he did not attempt to disturb the occupation or increase the rent, but received it during all the time he remained owner. He sold by private contract to Mr. Harris, from whom it passed to his widow, Mrs. Harris, and from her again, by private contract, to the respondent's father, Maharajah Greesh Chunder Roy, as has been already stated. During all this time (and for a considerable period before, so far as appears, indeed, from the very creation of the tenure—more than sixty years ago) the same rent has

always been paid; and there is no evidence that when first imposed (nay, even when the purchase was made)—it was not a perfectly adequate rent for the property;—great changes in the value of property have now arisen, and the respondent demands by his plaint an annual rent of Rs. 1,410, or nearly twenty-three times the amount of the original rent, according, as he states it, to the actual rate current in the village.

(i). If the section in question did not authorise the purchaser to disturb the possession, and left him an option to confirm the existing rate of rent, there seems to be the strongest evidence that he exercised that option in favour of the talukdar; and even if the same rights passed from him unimpaired to Mr. Harris, and in succession to those who claim under him, the evidence is equally strong—nay, as regards Mr. Harris personally, it is stronger. It is therefore unnecessary to decide whether the section is to be construed as giving a power only to the purchaser, or to him and his heirs, or a power attached to the zemindary, which passed to subsequent purchasers.

(j). Their Lordships, moreover, observe that the power given is to collect what the former proprietor would have been entitled to demand if the cancelled engagement had never been made,—words which seem to point to something to be done on the change of ownership, not to something to be done after any indefinite lapse of time; and, as before remarked, in terms the power given is only to the purchaser himself, as to whom reasons might apply which would not extend to subsequent purchasers from him. Their Lordships, however, pronounce no opinion on this question, it not being necessary to decide it. They say no more than that a construction which would render the title to property necessarily uncertain, ought not, in their judgment, to be given to a power of this description.

V. On examining the regulations, their Lordships are satisfied that the respondent's case can rest only on the power given by the section in question; and they are of opinion that those powers, assuming them to be in force, will not support the present action. They are glad to find that it is not their duty to support a claim which appears to them to be unjust. During the long period for which this property has been held at a small unvarying rent, it has been bought and sold, and changes and improvements have been made, no doubt at a considerable expense, and upon the faith of the rent to the zemindar continuing unchanged;—he has purchased while that state of things existed, and, it must be presumed, for a price calculated accordingly; and it is manifestly unjust that he should be allowed to disturb it.

32. The second case mentioned in para. 31 was that of a putnee tenure in a zemindary which, thirty years before the suit, had been sold for arrears of revenue. The possession had ever since remained undisturbed; but the respondent, Mohesh Chunder Mitter, who derived from the auction-purchaser, claimed a right to enhance the rent of the putnee. The Privy Council's judgment was as follows:—

I. Upon the evidence their Lordships have no doubt that, at the date of the earliest of the Government sales, those whom the present

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Para. 32, contd.

appellant represents were, by virtue of the pottah, in possession of the land which it covers, at a fixed rent, under a sub-tenure binding upon the then zemindars.

II. It follows that the respondent's right to enhance the rent, which implies a right to vary the terms of the sub-tenure, and to set it aside if that title to enhance be disputed on grounds inconsistent with the obligations of such a dependent tenure, must, if it exists at all, depend upon the peculiar and statutory powers acquired by a purchaser at a sale for arrears of revenue. * *

(a). That neither of the respondents is entitled to exercise the statutory powers of a purchaser at such sale, has been strongly argued by the learned Counsel for the appellant, upon the following, among other, grounds: The sales took place under Regulation XI of 1822; and the rights of the purchasers, through whom the respondent's claim, were defined by the 30th and three following sections of that regulation. These enactments were repealed by the 1st section of Act XII of 1841; and all the provisions of that Act, with the exception of the first and second sections, were again repealed by Act I of 1845, which, as modified by some subsequent Acts, is the existing Sale Law.

(b). Neither of the two last-mentioned Statutes contains any saving of rights acquired under the Statutes which it repealed; and though each gave to purchasers at sales for arrears of Government revenues powers equal to, or even larger than, those given by the repealed Statutes, it expressly limited those powers to purchasers at future sales, *i. e.*, "sales under this Act." The respondents, therefore, cannot invoke Regulation XI of 1822 as the foundation of these alleged rights, because that has been absolutely repealed; and they cannot call in aid the subsequent Statutes, because they have given no power to purchasers at sales which took place before they were passed.

(c). This point, though it seems to have been overlooked in many cases in India, is not now adjudged here for the first time. It was fully considered and determined by this Committee in the case of the *Ranee Surnomoye vs. Maharajah Sutteeschunder Rai* (10 Moore, p. 123). The Judges of the High Court have attempted to distinguish that case from the present, on the ground that in the former the sale relied upon was made under Regulation XLIV of 1793. But the statement proceeds upon a misapprehension of the facts of the earlier case. For in that, as in these, the sale on which the power to enhance depended had taken place under Regulation XI of 1822; and it was not until they found that they could not support their case, either on that repealed regulation or on the subsequent Acts, that the learned Counsel for the respondent, the Maharajah, fell back on the 5th section of Regulation XLIV of 1793, which, though suspended by the subsequent legislation on the subject, had never been expressly repealed.

III. Their Lordships must also observe that, in the judgment delivered in that case, it was carefully considered whether a sale for arrears of revenue of itself merely, and without any act, proceeding, or demonstration of will on the part of the purchaser, altered the character of the tenure. And it was declared that the Sale Law had not "that hard and rigid character." It is true that the judgment, assuming that the powers given by Regulation XI of 1822 had been swept away by

the repeal of that Statute, dealt only with the effect of a sale under Regulation XLIV of 1793. But what it laid down concerning such a sale may even, *à fortiori*, be predicated of a sale under any of the subsequent Sale Laws, and in particular of one under Regulation XI of 1822. For the words of the Regulation of 1793 (section 5) are, that all engagements of the former proprietor, and all under-tenures granted by him, shall "stand cancelled from the day of sale"; whereas the Regulation of 1822 (section 30) enacts that "all tenures which may have been created by the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all tenures which the first engagee was competent to set aside, alter, or renew, shall be *liable* to be avoided, and annulled by the purchaser," &c.,—expressions which far more strongly than those of the earlier regulation import that the estate is not, upon a sale for arrears of revenue, necessarily and *ipso facto* changed in its nature and incidents. And, if this be so, the repeal of the regulation which destroys the power to change the estate must leave its freedom from change, independent of mutual will, unimpaired.

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Para. 32, contd.

IV. Their Lordships, then, being clearly of opinion, both upon principle and the authority of the decision in the 10th Moore's Indian Appeal, that the respondents cannot now for the first time exercise powers which, if they ever existed, existed only by virtue of the repealed sections of Regulation XI of 1822, do not deem it necessary to consider whether the stringent powers given by those enactments to purchasers, *enominé*, could in any case be exercised by the heirs or assignees of such purchasers. Justice and sound policy alike require that, inasmuch as the law has given them for the particular purpose only of enabling the purchaser again to make the income of the estate an adequate security for the public revenue assessed upon it, and the exercise of them cannot but occasion great hardship to under-tenants and insecurity to property, they should be exercised within a reasonable time. And their Lordships believe that that object has now been in some measure secured by Acts X and XI of 1859.

V. Their Lordships have further to remark that—

(a). In the case of the Ranee Surnomoye, to which they have already referred, this Committee, whilst it carefully abstained from determining whether, upon the true construction of all the Regulations taken together, the 5th section of Regulation XLIV of 1793 ought to be taken to have been repealed, nevertheless proceeded to consider whether that enactment, if assumed to be still in force, would support the respondent's case. And, after putting upon the clause the construction stated at page 147 of the Report, the judgment ruled that the purchaser had an option to confirm the existing rate of rent, and must, upon the evidence in the particular case, be taken to have exercised that option in favour of the dependent talukdar.

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(b). Their Lordships must reiterate the doubts expressed by those who decided the case of the Ranee Surnomoye, whether the clause in question can be held to be in force for any purpose but that of declaring the general principles upon which all the subsequent legislation has

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Para. 32, contd.

proceeded, *viz.*, that of putting a purchaser at a sale for arrears of revenue in the position of the party with whom the perpetual settlement of the estate was made. They do not think that a party who has lost the particular rights which were given to him, or to the purchaser whom he represents, by any of the subsequent statutes, can fall back upon the old law which has been so repeatedly modified.

33. From these decisions of the Privy Council it appears that, until 1858—

I. Where any land paid rent not less than the established pergunnah rate of 1793, the *status* of the holder of that land, as tenant or ryot, was not affected by the sale for arrears of revenue of the estate on which the land was situate. Alike under the Sale Law of 1793, as under subsequent Sale Laws down to 1858, the purchaser, even if asserting, immediately on his purchase, his powers under the Sale Law for the time being, could not have enforced more than the pergunnah rate which was being paid; that is, the Sale Law could not have been put in force against the holder of that land, the payer of that rate.

II. And even those who, at the time of sale, may have been paying less than the established pergunnah rate, were exempt from disturbance in their possession at that favoured rate, if each successive purchaser of the estate at a public sale did not, within a reasonable period after his own purchase, prove and enforce his right of enhancement under the Sale Law for the time being: by abstaining from the exercise of that right, within a reasonable period, he confirmed the favoured rate, against himself and his representatives, until the next sale of the estate for arrears of revenue.

III. Thus, even before 1841, rights of enhancement under the Sale Law for the time being, which a purchaser of an estate at a public sale for arrears of revenue may have allowed to be dormant, died after a reasonable time; and a formal record that they were extinct was entered in Act XII of 1841 (see para. 30), which repealed all previous Sale Laws, without saving any rights of enhancement that may have subsisted under them up to 1841. Dormant, but not extinct, rights, in the interval between the passing of Act XII of 1841 and its repeal by Act I of 1845, were extinguished in like manner by the latter Act.

IV. Hence, whatever titles by prescription may have been growing, outside the range of the Sale Laws, from 1793 to 1858, the growth of such title was not interrupted by those laws, except in the specific instances in which

rent was actually raised by a purchaser of an estate, at a public sale, under the powers conferred by the Sale Law for the time being.

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ENHANCEMENT.
Para. 33, contd.

V. In establishing these positions, the Privy Council held, as the governing principle of the Sale Laws from 1793 to 1858, that the possession of a holder of land, at the rate which he might be paying, was not to be wantonly disturbed by any sale for arrears of revenue of the estate on which his land was situate. It could be disturbed only for the purpose, and to the extent, of giving to the purchaser, out of the yearly proceeds of the land concerned, merely the same means of providing the revenue payable to Government by the zemindary, which the original engager with Government for that revenue derived in 1793 from that land; that is to say, in none of the cases in which rent may have been enhanced under the Sale Laws from 1793 to 1858 should it have been raised higher than the established pergunnah rate in 1793.

34. The law of limitation which existed up to 1850 may be conveniently set forth in the next Appendix.

APPENDIX XIX.

ENHANCEMENT OF RENT FROM 1859.

APP. XIX.

LIMITATION
UNDER NATIVE
LAW AND
BEFORE 1793.

Para. 2.

Supplement to
Colebrook's
Digest, pages 3-4
and pages 13-16.

1. The law of the limitation of suits in Bengal was established in 1772 on the basis of the Native law. Provincial Courts of Dewannee, with jurisdiction in revenue suits as well as civil, were established by an order of 21st August 1772, and the Court of Sudder Dewannee Adawlut by an order dated 11th April 1780. Both these orders declared a law of limitation, fixing for the institution of suits of all kinds (including rents) a limit of twelve years, on the basis of the Mahomedan law. "Demands of rent" were enumerated in the earlier order among the suits cognizable in the Civil Courts which were to observe this law of limitation; and the later order gave to the Court of Sudder Dewannee Adawlut, which had to observe the same law of limitation, cognizance of all—

"Demands of zemindars, talukdars, &c., on their under-farmers, malzamins, inferior landholders, and collectors or others, from whom rents or revenues are immediately due to them; and, in short, all demands for rents or revenues, of persons employed in the collection of them, either officially or hereditarily, in the different gradations downwards from Government to the ryots or immediate occupants of the soil, and again, in the same manner, all complaints of ryots and persons of any of the other above-mentioned denominations, against the persons to whom they pay revenue, in the different gradations upwards, for *irregular or undue exactions*; and in general for all oppressions which do not fall under the cognizance of the Fouzdary Courts.

2. The terms irregular and undue exactions and oppression (of the kinds not cognizable in Criminal Courts) were applied in 1772 to 1790, and later, to exactions by zemindars in excess of the customary rates of rent (Appendix XVI, para. 3). In other words, suits for enhancement of rent were included in the law of limitation in the past century. Hence Regulation VIII of 1st May 1793, section 49, provided as follows:—

"It is to be understood, however, that istemrardars (moucurrydars) of the nature of those described in section 18, who have held their land

at a fixed rent for more than twelve years, are not liable to be assessed with any increase, either by the officers of Government or by the zemindar or other actual proprietor of land, should he engage for his own lands." APP. XIX.

LAW OF LIMITATION FROM 1805.

Para. 4.

Thus, the ingenious theory that rent is an ever-recurring cause of action, was not known to the authors of the permanent settlement, any more than it had been dreamt of, ever, by the English Parliament. The istemrardars of more than twelve years' standing were held to have acquired by prescription, as if no such theory was in reason conceivable.

3. The law and the usage of limitation under Native rule and under the orders of 1772 and 1780, were not abrogated by the Regulations of 1793. Rather, the limitation of twelve years, recognized in that law and usage for all suits, including rent suits, was repeated in Regulation III of 1793, section 14. Furthermore, Regulation VII, 1799, section XV, clause 8, enacted that in all cases excepting ejectment for arrears of revenue "the Courts of Justice will determine the rights of every description of landholder and tenant, when regularly brought before them, whether the same be ascertainable by written engagements, or defined by the laws and regulations, or depend upon general or local usage, which may be proved to have existed from time immemorial." Now, the disputes between landlord and tenant relate entirely to (1) possession of and title to land, (2) enhancement of rent; indeed, it may be said that, as between zemindar and ryot, they relate solely to enhancement of rent, for, unless there is a dispute about rent, the zemindar does not dispute the title to occupy. These disputes about enhancement of rent the Civil Courts were expressly empowered, thus, to determine according to immemorial usage, in the absence of written engagements, and we know that down to 1859 there were no written engagements for the great body of the millions of cultivators in Bengal. Hence, if ever any class of suits was expressly designated as determinable by the law of prescription, it was the suits for enhancement of rent.

4. Not long after, Regulation II, 1805, was passed "to explain the existing limitations of time for the cognizance of suits in the civil Courts of Justice, to provide further limitations with respect to certain suits," regular and summary, and to make other provisions, &c. The following passages occur in that regulation:—

I. The period of twelve years adopted in all these provisions appear to have been established when the administration of civil justice was first committed to the servants of the Company, on the institution of the

APP. XIX. Dewannee Adawlut in the year 1772 ; and in the plan for the admission of justice then proposed by the Committee of Circuit (which adopted by Government on the 21st August 1772), it is remarked "by the Mahomedan law all claims which have lain dormant for years, whether for land or money, are invalid ; this also is the law of the Hindus, and the legal practice of the country." This observation does not appear to be correct with respect to the Hindu and Mahomedan laws, though it may have been so with regard to the legal practice of the country ; and whether previously established or not, the law having been now in force above thirty years, it would be improper to abrogate it.

LAW OF LIMITATION FROM 1805.

Para 1, contd.

Claims for enhancement of rent were not excepted.

II. The declared grounds, however, on which this limitation was introduced, * * *viz.*, "the litigiousness and perseverance of the natives of this country in their suits and complaints, often productive not only of inconvenience and vexation to those adversaries, but also of expense and actual oppression," are not applicable to suits for the recovery of public rights and dues which may be instituted on the part of Government, &c. For such suits and claims the unlimited time herebefore allowed by the laws of England (as by those of the Hindus) has been latterly restricted to a period of sixty years, being the largest period fixed for the judicial cognizance of the claims of individuals in particular cases. * *

III. The period of time required to establish a right of usufruct and prescription has been different under different legal provisions ; being arbitrary, the Governor General in Council does not judge it necessary to alter the period which has been so long established in the provinces * * in the judicial prosecution of demands of usufruct beyond that period.

The regulation then proceeded to modify the previous law so as to enlarge the period of limitation for certain cases, but without abrogating the usage, or those parts of the previous law under which, as already shown, the law of limitation applied to suits for the enhancement of rent. To the contrary, the right of Government to place an assessment on "land held exempt from the public revenue without sufficient title" was expressly stated to be within the law of limitation, a period of "sixty years from and after the origin of the cause of action," &c., having been fixed by the assertion of the claim in a regular suit. It had not dawned on the Government of 1805 that rent was an recurring cause of action.

5. It was held by the Sudder Court before 1859 that a long interrupted occupation, since 1793, for more than twelve years at a uniform rate of rent, did not create a right to permanent occupancy at that rent, because the zemindar's title to the land at an enhanced rent, at any time, is not barred by the law of limitation, the law being inapplicable to suits for enhancement of rent.

of rent because rent is an ever-recurring cause of action. The cases which are held to have established this doctrine, to the ryot's prejudice, are as follows:—

of App. XII
LAW OF EJECTMENT FROM LAND
PART. 6.

I. 1845, 3rd December.—Meertinjoy Shah, a dependent talukdar, Appellant, *versus* Zemindar, Gopal Lal Thakoor, Respondent.—Vol. VII, page 217.

II. 1845, 26th April.—Digumber Singh sues to fix the rent demandable on the defendant's lands. A former suit instituted by the petitioner's father, for possession of the said lands, was thrown out on 17th August 1817, with reservation to sue for an adjustment of the rent. The defendant evidently was a dependant talukdar. (Sudder Court Decisions, 1845, page 129.)

III. 1823, Vol. III, *Select Reports*, page 221.—Khazee Neekoos Marhan, zemindar, *vs.* Ram Lochen Ghose, dependent talukdar.

IV. 1831, March.—Musammut Deb Rani, *vs.* Ram Narayan Nag; suit for rent on 197 beegahs of land; clearly not an occupancy cultivator; apparently a dependent talukdar.

V. 1847, page 275 of *Reports*.—Jewar Singh and others; or a zemindar suing to recover rent for certain orchards for which rent never had been paid for a period anterior to the decennial settlement. The disputes had brought the matter before the criminal courts, whence it was referred to arbitration, &c. Evidently the claim was against a dependent talukdar, not against an occupancy cultivator, who would be a rare creature if he could contest with his zemindar by club law the possession of orchards.

VI. Pages 346-47, and 1823, 18th May, page 455, *Zemindar versus* —

Status of defendants not known, but suits held to be governed by the decision in I.

6. In these cases the suits concerned dependent taluks, created since the decennial settlement, or similar holdings under lease from the zemindar, that is, other than the holdings of occupancy ~~ryots~~ *tenants*. Therefore, a tenant holding under a lease from a zemindar cannot acquire rights by prescription, or under the law of limitation. The doctrines involved in one or other of the ~~cases~~ *decisions* were as follow:—

APP. XIX. This dictum was laid down in case I, or that of a dependent talukdar; and from its terms it could only apply to rents of tenures over that of the ryot, which are matter of contract between the zemindar and tenant. The payment of the established pergunnah rate of 1793 by a ryot was not a subject of contract with the zemindar; it was prescribed by law.

LAW OF LIMITA-
TION FROM 1805.

Para. 6, contd.

III. A claim for rent is not barred by lapse of time (case V).

This dictum was in the case of a dependent talukdar. Under English law a claim to tithes, or to other rent not depending on contract with the landlord, is barred by lapse of time (Appendix XVII, paras. 33 to 35; see also I. in this paragraph). In another case in 1850 (19th September, page 494-5), a zemindar and his farmer sued to set aside a perpetual lease under which a ryot held certain land in their zemindary, &c. It was held that—

“No lapse of time applied to such a suit, under the precedents on the subject, and the validity of the perpetual lease is open to question. We therefore remand the case to the Judge of Patna, who will re-try it with reference to the above remarks.”

The ryot having claimed under an alleged perpetual lease, evidently his claim was to pay less than the pergunnah rate. Manifestly the ruling was beside any question of occupancy right subject to payment of the pergunnah rate. Under the Regulations of 1793, the pergunnah rate, plus *abwabs*, of 1790, if fixed in money, was not liable to increase; accordingly, the amount of rent for the earliest year since 1790 for which a ryot could prove payment on account of his holding, was, for that holding, the permanent pergunnah rate, unless the zemindar could produce documentary proof of the ryot's liability to pay a higher rate.

7. The decisions in the preceding two paragraphs were inapplicable to occupancy cultivators, who seek to pay the established pergunnah rate, and no more; and they were passed adversely to the defective titles of those who held under temporary or expired leases from zemindars. The suit of Digumber Mitter (plaintiff), appellant, *vs.* Ramsoonder Mitter (defendant), respondent (24th July 1856, page 617), was, however, against a ryot or cultivator. In it the plaintiff sued to enhance the rent of 7 beegahs and 3 cottahs of land; the defendant pleaded length of possession at a fixed rate, and the District Judge dismissed the claim on the

ground that the plaintiff having succeeded to the rights of an auction-purchaser who had acquired the estate in 1837, and had received from the defendant no more than the fixed rate pleaded by him, the plaintiff could not, after the lapse of twelve years, enhance the rent of defendant.

LAW OF LIMITATION FROM 1803.

Para. 9.

8. On the part of the plaintiff, Baboo Ramapershad Roy urged as precedents the several decisions above recited, which, as already observed, were inapplicable to occupancy ryots or cultivators. He argued—

(a). The theory of the law of limitation when applied to land is that when the possession is adverse, it applies; when only permissive, no question of title arises.

(b). The pleader refers to Angell's *Law of Limitation*, as between landlord and tenant, pages 540 and 542 read out.

The reference to Angell's *Law of Limitation* was irrelevant (para. 6, Sections II and III of this Appendix, and Appendix XVII, paras. 33 to 35). In the other plea (a) the assumption that the ryot's holding was permissive, only begged the question as regards resident cultivators who occupy at established pergunnah rates under the Regulations of 1793;—the zemindars, so far from being empowered to eject ryots who occupied on pergunnah rates, were bound to give them pottahs specifying the pergunnah rates of rent payable for the ryots' holdings.

9. The Court, misled by Baboo Ramapershad Roy's pleading, decided that the law of limitation did not bar a suit for enhancement of rent, even though twelve years may have elapsed since the cause of action arose. They relied on the following reasons:—

I. In 1849 the Court tried a question "whether, in the absence of a *pottah* or *kabuliut*, which can be proved to be authentic by either zemindar or ryot, a ryot, who had paid an uniform amount of rent, as for a certain supposed quantity of land, for more than twelve years, is thereby debarred from claiming a measurement of the land actually in his occupation, and reduction of his *jumma* upon the *pergunnah* rates according to the result of such measurement." In the absence of an agreement binding the ryot to pay a specific amount of rent, irrespective of the quantity of land actually held by him, the Court was satisfied that the ryot is not barred, by having paid an uniform rate for twelve or more years, from claiming a measurement, in the same manner as a zemindar has always, when not bound by express agreement, a claim to a *fair* measurement."

Here the question was not the rate of rent (which, under the law, could not exceed the *pergunnah* rate), but whether the ryot should be barred from *claiming* payment:

APP. XIX. the pergunnah rate for land *not* held by him. Yet the Sudder Court in 1856 argued that this precedent of 1849, and the other irrelevant precedents before mentioned,

LAW OF LIMITATION FROM 1805.

Para. 9, contd.

must be held to establish the principle that, unless the landlord and tenant are bound by express engagement to an uniform rate of rent, the right to raise or reduce it, however dependent on other circumstances which may govern each particular case, is a right that cannot be disputed on the plea of lapse of time, nor be extinguished by prescription.

The regulations of the decennial settlement enacted that all ryots should pay the ancient established pergunnah rates, unless they could claim lower rates under special agreement with the zemindar. The preceding doctrine, reversing the Regulations of 1789-93, lays down that the ryot must pay any rent the zemindar pleases, unless a uniform rate of rent is secured to him under an express engagement. There is no authority for this beyond the irrelevant decisions before mentioned, which apply only to such rents as are the subject of contract or leases by the zemindar with tenants holding between the zemindar and the ryot. And even those decisions do not affirm the zemindar's right to enhance beyond the pergunnah rate, but simply his right to challenge any rent as being below the pergunnah rate.

II. The Court in 1856 continued :—

The appellant's pleader has also proved, by the submission of competent authorities on the subject, that, under the English statutes, the law of limitation and prescription was held not to apply to suits of the nature before us. The reasoning on this seems to be that, as the tenant's possession is from the first a possession with the *consent* of the landlord, it must be considered as *permissive*, however long it may continue, and that no length of time can, therefore, bar the landlord's right of recovery, or secure to the tenant a title adverse to the landlord's interest.

"The connection between landlord and tenant in this country commences on a similar understanding. The under-tenant in Bengal, whether holding by pottah or as a tenant-at-will, occupies his land with the consent of the zemindar, and the rent, however determinable, is only a consequence of the arrangement. Should the zemindar content himself with less than the local rates in the case of a tenant-at-will, the law only imposes on the zemindar the necessity of serving such tenant with a notice before he can legally raise them; but the precedents of this Court cited above clearly indicate that the construction put upon the law here as well as in England is the same, and that the failure or forbearance of the zemindar to demand an increase of rent during 12 years will not change a tenant-at-will into a tenant with permanent rights of occupancy.

III. In this argument there are three statements :—

(a). That the under-tenant, whether holding by pottah or without it, occupies his land with the consent of the zemindar.

(1). This is incorrect. The permanent settlement, according to the declaration of its authors and of the Home authorities, was designed to afford to the zemindar and to the ryot, alike, the same security, that each should enjoy the fruits of his own industry. Any subsequent regulation, at variance with this declaration, would have been a breach of the permanent settlement. The legal status of the ryot was the same in 1856 as in 1793. Now, it was not the case in 1793 that the mass of the cultivators in Bengal, *viz.*, the cultivators resident in their own villages, occupied their land with the consent of the zemindars: they occupied in their own right subject to payment of the ancient established per-gunnah rates. This is proved by the custom of 1793 and by the fact that, even so late as 1859, according to the British Indian Association, the bulk of the lands in Bengal was held without pottahs and kabuliuts, *i. e.*, in accordance with the custom which prevailed in 1793. Under Native rule the State, and under British rule, up to 1793, the Government, and consequently the zemindar, could no more appropriate a ryot's land without buying it, than they could appropriate any other private property; and the permanent settlement was designed to confirm and preserve—not to destroy—the rights of the ryot. This disability in the zemindar to take his ryot's land without buying it, holds true to the present day. Thus, Mr. Justice Seton-Karr observed (2nd June 1864)—

APP. XIX.

LAW OF LIMITATION FROM 1805.

Para. 9, contd.

“If a zemindar himself wishes to establish a *haut*, to build a temple, to erect a *serai*, to enclose a garden or pleasure-ground, and has not either a piece of vacant ryotty land or of *khamar* or *nij-jote* land at his disposal for this object, he is *forced* to treat with a tenant even on his own estate, and to take a pottah from him. I do not believe that it ever entered into any zemindar's head to think that he could occupy land for such a purpose without recourse, previously, to such a formality. Scores of zemindars all over the country hold hundreds of ryotty and subordinate tenures in this way in their own estates as well as in the estates of their rivals and opponents, and while holding such tenures are possessed of the status of, and are subject to all the conditions imposed on, a ryot.

Mr. Seton-Karr showed that this disability of the zemindar to dispose of his ryot's lands at his pleasure, as the lands of tenants-at-will, was not consequent on the possession of permanent leases by the ryots; he added that, outside Behar, “between many zemindars and ryots there has been no interchange of pottahs and kabuliuts at all” (see Appendix XIX, para. 13, section IIIc).

(2). In the statement (a) above quoted, the Court could conceive of only two kinds of ryots, *viz.*, *pykasht* ryots, or

APP. XIX. the pergunnah rate for land *not* held by him. Yet the Sudder Court in 1856 argued that this precedent of 1849, and the other irrelevant precedents before mentioned,

LAW OF LIMITATION FROM 1805.

Para. 9, contd.

must be held to establish the principle that, unless the landlord and tenant are bound by express engagement to an uniform rate of rent, the right to raise or reduce it, however dependent on other circumstances which may govern each particular case, is a right that cannot be disputed on the plea of lapse of time, nor be extinguished by prescription.

The regulations of the decennial settlement enacted that all ryots should pay the ancient established pergunnah rates, unless they could claim lower rates under special agreement with the zemindar. The preceding doctrine, reversing the Regulations of 1789-93, lays down that the ryot must pay any rent the zemindar pleases, unless a uniform rate of rent is secured to him under an express engagement. There is no authority for this beyond the irrelevant decisions before mentioned, which apply only to such rents as are the subject of contract or leases by the zemindar with tenants holding between the zemindar and the ryot. And even those decisions do not affirm the zemindar's right to enhance beyond the pergunnah rate, but simply his right to challenge any rent as being below the pergunnah rate.

II. The Court in 1856 continued :—

The appellant's pleader has also proved, by the submission of competent authorities on the subject, that, under the English statutes, the law of limitation and prescription was held not to apply to suits of the nature before us. The reasoning on this seems to be that, as the tenant's possession is from the first a possession with the *consent* of the landlord, it must be considered as *permissive*, however long it may continue, and that no length of time can, therefore, bar the landlord's right of recovery, or secure to the tenant a title adverse to the landlord's interest.

"The connection between landlord and tenant in this country commences on a similar understanding. The under-tenant in Bengal, whether holding by pottah or as a tenant-at-will, occupies his land with the consent of the zemindar, and the rent, however determinable, is only a consequence of the arrangement. Should the zemindar content himself with less than the local rates in the case of a tenant-at-will, the law only imposes on the zemindar the necessity of serving such tenant with a notice before he can legally raise them; but the precedents of this Court cited above clearly indicate that the construction put upon the law here as well as in England is the same, and that the failure or forbearance of the zemindar to demand an increase of rent during 12 years will not change a tenant-at-will into a tenant with permanent rights of occupancy.

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APP. XIX.

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Para. 9, contd.

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Mr. Seton-Karr showed that this disability of the zemindar to dispose of his ryot's lands at his pleasure, as the lands of tenants-at-will, was not consequent on the possession of permanent leases by the ryots; he added that, outside Behar, “between many zemindars and ryots there has been no interchange of pottahs and kabuliuts at all” (see Appendix XIX, para. 13, section IIIc).

(2). In the statement (a) above quoted, the Court could conceive of only two kinds of ryots, *viz.*, *pykasht* ryots, or

APP. XIX. non-resident cultivators from another village, who were tenants-at-will, or were inchoate occupancy ryots, and such khoodkasht ryots as held at less than the pergunnah rates, under special agreement; the bulk of the ryots, *viz.*, the resident cultivators in each village, who held without pottahs, at the established pergunnah rates, under a custom which no law had terminated, were overlooked by the Court, through a strange omission. Had the Court remembered the millions of this class of ryots, they would have overruled Baboo Ramapershad Roy's argument that the ryots, being tenants under lease, or tenants-at-will, could not have acquired right of property under the law of limitation, inasmuch as that law operates in favour only of adverse possession. Here was another error. It has been shown (Appendix XVII, para. 17) that, with respect to land which originally was *res nullius*, and which was acquired by reclaiming it from waste, or by inheritance from those who had reclaimed it from waste (and such was the position of all resident cultivators in a village), a right obtains superior to that of adverse possession. In virtue of the right, the possessor of the land has a simple title, free from those *accidental facts of title* arising from *transfer* of the land, which alone necessitate the condoning, through the law of limitation, of any defective proof of those facts. The claim of resident cultivators is, not that they may be allowed to hold by reason of long-continued adverse possession, but that they may be left undisturbed in the possession of land obtained from *res nullius* by their ancestors or by themselves. They assert this claim on a double ground, *viz.*, first, under the principles, alike of universal law and of English law, which determine the right to land that has never been alienated since its reclamation from waste, and which throw the *onus* of proof on those who challenge the right (whereas the Court threw the *onus* of proof on the ryot); *secondly*, under the laws of usage and prescription under the permanent settlement, which secure the ryot's privilege of paying as land tax no more than the ancient established pergunnah rate of rent.

(b). That if the zemindar has contented himself with less than the *local rates* in the case of a tenant-at-will, the law only imposes on the zemindar the necessity of serving the tenant with a notice before he can legally raise the rate.

If "local rates" mean the ancient established pergunnah rates, this statement was correct, but in that case twelve years' occupancy at the pergunnah rates would mature into

occupancy right, for the law of 1793 did not allow the zemindar to exact more than the established pergunnah rate; all that he might levy in excess was exaction. If, however, the rates intended by "local rates" were those to which zemindars may have raised the rates of rent upon ryots, from 1841 to 1856, beyond the ancient established pergunnah rates, under an erroneous reading, and a misapplication of the Sale Law of 1841 (Appendix XVIII, para. 28), then the Court's reasoning was vitiated by this misapplication to pergunnah rates for ryots of local rates, which, under the Sale Laws of 1841 and 1845 and the laws of 1793, could, at the zemindar's option, be raised only against tenants who held between the zemindar and the ryot.

APP. XIX.
LAW OF LIMITATION FROM 1805.
Para. 9, contd.

(c). The failure or forbearance of the zemindar to demand an increase of rent during 12 years will not change a tenant-at-will into a tenant with permanent rights of occupancy.

If the rent which the Court supposed to be paid during the twelve years was less than the ancient established pergunnah rate, they raised a false issue; for, under the immemorial custom which determined occupancy right to land, the right (failing a special agreement for a lower rate) was subject to payment for the land of the established pergunnah rate. If the rent implied in the Court's statement was the established pergunnah rate, the Court discussed either an absurdity, or a distinction without a difference: an absurdity, because an increase of the established pergunnah rate which had been paid for twelve years, or even for only one year, was inconceivable under the law; a distinction without a difference, because, so long as the cultivator was not disturbed in his possession by being required to pay for his land more than the established pergunnah rate, as understood by the authors of the decennial settlement, it mattered not to him whether you called him or not an occupancy ryot.

IV. Lastly, in the decision of 1856, the Court observed—

(a). It has been argued by Bāboo Sumbhoonath Pundit, on the part of the ryot, that the landlord's receipt of rent at a uniform rate during more than twelve years, is evidence of his having abandoned his *right* to demand more, and prevents the exercise of the *right* ever after. But the payment of the same rent for a considerable time by a tenant cannot be proof of the landlord's intention to restrict his own right of demand; it is far too ambiguous a fact to allow of any such conclusion being drawn in favour of the tenant.

This objection or reasoning of the Court was over ruled by the reasoning of the Privy Council (see Appendix XVIII, para. 32, Section Va, last sentence).

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Para. B, contd.

(b). It is moreover an argument practically inconsistent with any application of the limitation law. If that law, as assumed, barred the right of the landlord to re-assess the lands *for ever*, he could not exercise that right in the event of the lands being abandoned by the present occupant; the application of the law would not only affect his right over the present tenant, but would apparently fix the rent of the land at the present rates for ever.

(1). In the passage in italics we trace the error which pervades most of the voluminous discussions of the Rent Laws, *viz.*, that ryot's rent, as established in Bengal by the permanent settlement, was a personal obligation, which varied each holding with the class of ryot, whereas it was a permanent pergunnah rate of rent laid upon the land of each holding, which rate was to be paid by the occupant holder, unless he could prove his title to pay a lower rate, conformably with the specific conditions laid down for such favoured rates in Regulation VIII of 1793. The general permanent rate upon the land was not liable to enhancement (Appendix XVI, paras. 16 and 21 to 28).

(2). From before 1789, throughout Bengal, the ancient established pergunnah rate was a rate fixed in money, and therefore not liable to increase from a rise of prices. Increase from a rise of prices was in the form of an *abwab*. In the regulations of the decennial settlement it was enacted that the established pergunnah rate, as paid throughout Bengal in money, and existing *abwabs*, should be consolidated in one amount, to be specified in money; and this amount, fixed in money, was to be the rent leviable thereafter from the ryot as the pergunnah rate of rent. The regulations did not provide for any future revision of the rate thus fixed; on the contrary, they prohibited fresh *abwabs*, or the only form of revision of assessment by which, up to 1789, an increase of rent on account of a rise of prices had been levied under Native rule. The terms of the regulations, too, showed that the money rent thus to be determined in 1793, and entered in the ryot's pottah, was assigned as the permanent rent. Coupling these facts with the explicit declarations of Lord Cornwallis and of the Court of Directors, that the ryot's rent was to be as permanently fixed as the zemindar's, and applying the ordinary rules of interpretation (Appendix XVII, para. 36), it was the unmistakable purpose of the Regulations of 1793 to preclude the zemindars from raising, ever after, the rate of rent once entered in the ryot's pottah, in obedience to the regulations of 1793. And it follows that a money rate of

rent, once accepted from a resident cultivator, since 1793, becomes the expression of the pergunnah rate payable by him, unless the zemindar can prove that it is less than the pergunnah rate; yet in the preceding extract (b), the Sudder Court in 1856 considered it monstrous that the rate of rent on land should be fixed for ever, as designed by the authors of the permanent settlement.

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(3). There was thus a complete contradiction by the Sudder Court in 1856 of the authors of the decennial settlement of 1789; this divergence between the unmistakable purpose of the law in 1793 and the judge-made law of 1856 (judge-made, be it remembered, by judges who from 1793 to 1856 were ignorant of the rules of equity) is, perhaps, best illustrated by the terms applied in this very suit, and in the Regulations of 1793, respectively, to the maximum rent payable by the ryot. In the Regulations of 1793 that maximum was defined as the established customary rate of the pergunnah. In the suit of *Degumber Mitter vs. Ramsoonder Mitter*, the decree in the Subordinate Moonsiff's Court was for "enhanced rate of assessment according to the actual value of the land." In the pleadings for appellant and respondent, alike, pergunnah rates were not mentioned; in the judgment by the majority of four Judges out of five, the term used is "local rates" in contradistinction to a "fixed rate"; and lest any definiteness should be imparted to, or implied in, the term "local rates," the next paragraph to that in which the term "local rates" is used affirms the zemindar's right to re-assess his lands when he can, at an increase upon the rates previously paid by the ryot, thus converting "local rates," into whatever the zemindar chooses to make them. It is not surprising that, under such a reading of the law, local rates throughout a pergunnah or zemindary have been raised in one night by the mere fiat of the zemindar (Appendix XIII, para. 7 s 4 a 6 Gya); but it is surprising that local rates, susceptible of such manipulation, should ever have been deemed consistent with the State's obligation, under that permanent settlement in which the faith of Government was as solemnly pledged for a limitation of demand, to the ryot as to the zemindar.

10. The change from the pergunnah rates of 1793 to the competition rates claimed by zemindars in 1863, was brought about by the obliteration of the pergunnah rate through the wrong-doing of zemindars, in which they were assisted by the Huftum and Punjum Regulations of 1799 and 1812,

APP. XIX. and by the inaccurate phraseology of Regulation. XI of 1822, and of the Sale Law of 1841. Sir George Campbell, in his judgment on the great rent case, gave an account of the progress of the change, which may be quoted :—

—
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—
Para. 10, contd.

I. Such being the laws, it may be conceded that, from the time of the permanent settlement, the zemindars have been free to make such arrangements and contracts as pleased them, regarding all land in which no rights were held by ryots or others, at the time of the settlement, or which at any time might lapse by the failure or abandonment of the ryots; subject to this, that a man once admitted on an ordinary khoodkasht tenure, without limitation of time, could not be ejected or enhanced beyond the customary rates, except in certain cases by an auction-purchaser.

Sir George Campbell was wrong. Under the Regulations of 1793, the zemindars were restrained from taking more than the established pergunnah rates, from old lands or new, from old ryots or new, from resident cultivators or non-resident cultivators (see Appendix No. XVI, para. 15, and No. XVII, para. 30).

II. The question is, what, in fact, did the zemindars do? Did they, by the investment of capital, cultivate the waste for their own benefit? Did they take every opportunity of asserting an absolute right in every field that lapsed, and farm it out, on true commercial principles? Or did they, in truth, adhere to the old practice and customs of the country, and seek to increase the rent-roll, merely by settling new ryots on the old customary terms, leaving them to cultivate in their own way, and to occupy the land without limitation of time, subject to the payment of the rents established by the custom of the locality? It is notorious and well established by history, both general and judicial, that the latter was almost the universal rule. The zemindars did not invest capital in agricultural operations after the modern fashion. They did not seek to get rid of the old ryots and the old system, and to establish large commercial farms. On the contrary, the endeavour was to get new ryots. Ryots were considered to be the only riches; and the struggle of a good landlord was not to get rid of the ryots, but to tempt away another man's ryots by the offer of favourable terms. The ryot who was settled on waste or other ryoti land, cultivated it, stocked and furnished it, built his house, and dug his tank at his own expense, or by his own labour.

III. Hence it naturally followed that, according to the ancient custom and present understanding between the parties, the new ryot, who permanently settled in the village as a khoodkasht or resident ryot, acquired all the rights, privileges, and immunities accorded by usage to khoodkasht ryots. The ryots so settled were protected in the first instance by law in case of sale; and after the passing of Regulation XI of 1822, they were in practice protected by habit and the interest of the purchaser, and resumed their former status.

IV. Of resident ryots, only the few who may have come in under special contracts at variance with the custom, or whose tenures passed

under the Sale Laws of 1841 and 1845, held on any other than the customary terms. In every case that comes before us, it is patent that, up to the present day, rents in Bengal are usually regulated by the customary rates; sometimes in the shape of *pergunnah* rates, more generally in that of local rates, universally known in each estate or part of the country. Frequently, *zemindars* know nothing of their estates, have no clue to the actual positions of each *jumma* or *ryot's* holding, but simply collect on a paper roll showing the annual payment due from each *ryot* according to the custom.

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Para. 10, contd.

V. But were the customary rates varied or enhanced, or how were they regulated?

(a). It seems a somewhat singular omission that in the regulations no provision is made for any enhancement of the *pergunnah* rate payable in money.

The reason of the omission is simply that enhancement was not intended; the authors of the permanent settlement intended, and the Regulations of 1793 prescribed, that the *ryot's* rent was to be fixed (as the rate thereafter recoverable from him, without indirect increase in the form of new *abwabs*) at the amount which he paid in 1793.

(b). It is remarkable¹ that, throughout the whole litigation of the long period between 1793 and 1859, no principle of enhancement, other than a reference to existing *pergunnah* or local rates, is anywhere to be found. There have been conflicting decisions as to the prescription by which right of occupancy was acquired, and great doubt was then thrown on that subject; but as regards any rule of enhancement, either at discretion, or on any other rule, save and except the standard of rates paid by the same class of *ryots* in places adjacent, there is nothing. We have particularly drawn the attention of the counsel on both sides to this point; and it is clear that there is no such case.

Sir George Campbell missed the common-sense inference that a principle of enhancement of rent was not fixed by those who, with great elaboration of detail, framed all the other parts of the permanent settlement, simply because they intended that the rent should not be enhanced.

(c). A common process for increasing the *ryot's* rent seems to have been a mere repetition of the old process by which *Tooran Mull's* assessment was enhanced. In spite of the prohibition against adding *abwabs* or cesses to the consolidated rates of the time of the settlement, illegal cesses (almost always in the regulated form of percentages, so many annas or pie in the rupee, or so many seers in the maund) were from time to time added on, and gradually annexed to the custom; then, as they became complicated and heavy, and led to resistance, compromise was effected, and the extra cesses were merged into a rate somewhat enhanced, to which the *ryots* consented. Then, as further increase of value took place, more cesses were superimposed on the rates, and presently another compromise took place. Sometimes in one way and

¹ Not so, as explained in the remark on (a).

APP. XIX. sometimes in another, the rates by mutual compromises and consent were from time to time enhanced, and the pergunnah rates were frequently split up into local rates special to estates and sub-divisions, according to the area of each new compromise. Still the new rates always had and have some local area. They were, and are, common to the body of the ryots of that locality. When the majority or body of the ryots had consented to an equitable compromise, an enhanced local rate was established, *and refractory individuals could be and were raised to that standard.*

—
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—
Para. 10, contd.

In the closing words in italics, Sir George Campbell shows a misapprehension of the permanent settlement. The rate of rent, once fixed in money, for each ryot, according to the pergunnah rate *plus* cesses, paid by him in 1793, became for him, *in law*, a perpetual rent, which was not liable to increase, thereafter, by a fresh re-opening of the inquiry respecting the pergunnah rate. Even the indirect enhancement of that money amount, through fresh *abwabs*, was prohibited. Accordingly, a consolidated money rate of rent, once paid by the ryot and received by the zemindar in 1793, or the year following, as the pergunnah rate of that day, was not liable, *in law*, to enhancement in a later generation. The authors of the permanent settlement did not contemplate the absurdity that all their care for securing mention in a pottah for each and every ryot of the money amount which he should pay thereafter for ever, as the aggregate of the customary pergunnah rate *plus* existing cesses, should be frustrated by the zemindars simply altering the pergunnah rate, through oppression of the ryots by means of Huftum and Punjum, and through the levy of cesses in defiance of the very law which constituted the deed of the zemindar's own permanent settlement with the Government. Yet the pergunnah rates were thus illegally altered by zemindars, and judges allowed the zemindars to profit by their wrong.

11. It appears thus far that—

Continual
growth of
occupancy
rights.

I. The English law of limitation does apply to tithes and to other rents, definite in amount or definitely determinable, which are not matter of contract. The established pergunnah rate of rent which obtained until 1793, and which the regulations of that year confirmed as the maximum demand leviable from ryots by a zemindar, was of this character.

II. Similarly to the English law, the Indian law of limitation before 1805 did apply to suits for the enhancement of ryots' rent, which rent was determinable by the customary or pergunnah rate. This old law of limitation, in

its application to these rent suits, was not abrogated by the APP. XIX. Regulation of 1805.

III. From 1805 to 1845, and later to 1856, no decision of the Sudder Dewanny Adawlut, having the force of law, had excluded suits for enhancement of ryots' rents from the law of limitation. Between 1845 and 1856 such decisions were indeed passed adversely to tenants over ryots, *viz.*, to those holding between the zemindar and ryots, who held under lease or grant from the zemindar as a matter of contract; but these adverse decisions related to rents arising from contracts, and accordingly they were on a principle which did not contravene or affect the principle that extends the law of limitation over the ryot's rents mentioned in I.

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GROWTH OF
OCCUPANCY
RIGHTS.

Para. 11, contd.

IV. Hence the custom, more ancient than law, under which occupancy rights grew up among the cultivators of land in a village, was not interrupted by the Indian law of limitation, at least until 1856. Rather the law till then strengthened and confirmed the custom.

V. The Regulations of 1793 conferred on zemindars a proprietary right in the alienated portion of the Government's gross demand upon the ryot, which was limited according to established custom; and this was the limit of the zemindar's proprietary right even in land newly reclaimed from waste. This limited proprietary right of the zemindar did not trench on the cultivator's occupancy right, which continued to accrue as before, outside the zemindar's limited proprietary right.

VI. In other words, nothing in the Regulations of 1793 abrogated, put an end to, or interfered with, the ancient custom under which the resident cultivators in a village acquired a right of occupancy in the land which they reclaimed from waste, subject only to the payment of the established or customary pergunnah rate of rent.

VII. On the contrary, the Indian law of limitation, conjoined with the Regulations of 1793, made that definite which under the previous custom had been indefinite, *viz.*, the period within which a pykasht ryot, by long residence in the village, could acquire occupancy right. The law of limitation fixed twelve years as the period; and the Regulations of 1793 gave effect to the law by requiring the zemindar to give pottahs to pykasht ryots at the established pergunnah rates on expiration of their then existing temporary leases. This fixing of a determinate or determinable pergunnah rate of rent, afforded to the pykasht ryot the one qualification

APP. XIX. wanting to mature his occupancy into an occupancy right under the law of limitation.

CONTINUAL
GROWTH OF
OCCUPANCY
RIGHTS.

Para. 11, contd.

VIII. Hence occupancy rights accrued from 1793 to 1856 without let or hindrance from law. The zemindars, indeed, by their power, for long, of might over right—through the *Huftum* and *Punjum* Regulations,—through an unlawful control over a corrupt police,—and through venality of ministerial officers in Civil and Criminal Courts—were indeed able to exact from ryots more than the customary rates of rent; but the payment of variable amounts of rent, under extortion, did not vitiate the occupancy right, *firstly*, because the legal status of any ryot who cultivated land was that of subjection to merely the established pergunnah rate of rent of 1790; whatever was taken in excess was extortion, positively prohibited by law, which, accordingly, the Courts could not recognize; *secondly*, because the amounts extorted were levied as *abwabs*, or cesses, separately from the established pergunnah rates.

IX. In 1856 a decision was passed by the Sudder Court which excluded suits for enhancement of ryots' rents from the law of limitation; but the decision erred in applying to the privileges of ryots precedents which had been established in, and were confined to, the cases of tenants holding under lease between the zemindar and ryot. Other grounds, too, of the decision were wrong in principle and fact.

12. Thus we find that—

I. The custom under which occupancy rights, among the residents of a village, grew up under native rule, was not interrupted by the Regulations of 1793; and accordingly it must have continued in full force, the natives of India being singularly tenacious of custom, particularly of customs affecting land, which are among their most cherished traditions.

II. Occupancy rights among pykasht ryots matured, more surely than before 1793, under the Regulations of that year, and under the law of limitation.

When to these facts we add—

III. The aversion of the cultivating class from migrating to other villages;

IV. The thralldom under which zemindars kept the cultivators as *adscripti glæbæ*, thus constraining them to acquire occupancy rights in spite of themselves;—

V. The sparse population, and the extensive waste lands in 1793; the dense population, and the greatly extended cultivation in 1856;—these facts implying that where all

villages were engaged in extending cultivation, each village perforce extended its cultivation through the increase of its own resident cultivators;—

The inference is inevitable that the bulk of the cultivators in 1856 must have been resident cultivators in their own villages, with occupancy rights.

13. And if this inference be correct, it should be corroborated by the same evidence as under native rule before 1793, *viz.*, that the ryots held without pottahs, subject to payment of the established pergunnah rates. Evidence on this point, and respecting III and IV in the preceding paragraph, may be cited.

I.—CULTIVATORS' UNWILLINGNESS TO MIGRATE FROM THEIR VILLAGES.

(a).—*Baboo Sumbhoonath Pundit, the Editor of the "Hindoo Patriot," and others (27th September 1851).*

(1). The habits of the Bengali people make them adverse to migration, and incapable of bettering their condition by it, and their notions entail some disgrace and considerable social inconvenience on the man who leaves the village of his forefathers.

(2). The population of this country is almost purely agricultural, and few among them have the knowledge, the means, or the inclination, to transfer their labour to other pursuits.

(b).—*Mr. Justice Norman, Great Rent Case.*

(1). Before Act X of 1859, the great majority of cultivating ryots, had their rights been duly observed and maintained, were entitled to hold their lands undisturbed on the due payment of their rent, and could not be compelled to pay rent at a rate dependent on the mere will of the zemindar, or otherwise than according to the customary rates, or those prevailing in the district.

(2). The ryots generally were not migratory, but remained settled on the lands which they occupied. I do not think that the right of occupancy was formerly confined to those who had acquired such a right by prescription. It extended to all who had given unequivocal proof that they intended to remain at the place of their settlement, and who had been recognised as fixed residents of the locality, although their holding may have been of recent date.

(3). The khoodkashts were doubtless, ordinarily, persons who derived their holdings from their ancestors, and whose rights were of old date; but I agree in what I understand to be the opinion of other members of Court, that length of time or ancient origin was not essential to his existence, and that the language of the later Sale Laws unjustly limited the protection given to this class by recognising only the rights of the kudeemee or ancient khoodkasht.

II.—ADSCRIPTI GLÆBÆ.

(a).—*Editor of the "Hindoo Patriot," Baboo Sumbhoonath Pundit, and others (27th September 1851).*

We avail ourselves of this opportunity to urge on the attention of Government the necessity of providing for the registry of istafas

APP. XIX.
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OCCUPANCY
RIGHTS.
Para. 13.

APP. XIX. (releases) made by tenants giving up their holdings. It frequently happens that a tenant, harassed by the oppression and the exaction of his landlord, would gladly give up his tenure if he could be assured that with the severance of his connection with the land held by him, his liabilities arising therefrom would really cease. Such an assurance, however, is now unattainable. The landlord has the kabuliut in his hands, with which it is always in his power to enforce all the summary processes enumerated in paragraph 16 against the tenant, whose only means of disenthraling himself from his predial bondage is by a regular suit.

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RIGHTS.

Para. 13, cont'd.

(b).—*Mr. C. Steer, Officiating Judge, Hooghly (12th July 1851).*

(1). As matters at present stand, the Collector can afford no relief, as he is prohibited from receiving a petition from a ryot throwing up his lands. There is no direct warrant in law for the Civil Court doing so, and Judges generally reject such petitions. The ryot is therefore entirely at the mercy of his zemindar to give him the relief sought for, or to refuse it. It must be needless to say that a zemindar will never acknowledge having received an istafa from his tenant, except when the lands are such as he can readily find another ryot willing to cultivate.

(2).—*Ibid., 26th November 1851.*

There is no disputing that the ryots are horridly oppressed; to what degree, is only known in its full extent to their tyrants. At present ryots are quite at the mercy of their zemindars. There is no legal means open to them of getting quit of any bad lands they may have acquired. * * The term "bad lands" is only relative; lands with a light or moderate rent might be good, which, if burdened with an oppressive rent, would be bad.

If the ryot is not allowed the protection of the police to remove his property, and if summary action and attachments are not barred, his resignation tendered to the Court will profit him nothing. His property will be seized, be the act sheer plunder or under colour of attachment, and the ryot will find it impossible to get it back. If he should complain to the Magistrate, the zemindar will plead an attachment. If he should appear before the Collector and seek the release of his property from an unjust attachment, the zemindar will reply that there has been no attachment at all. So that, if left without aid to remove his property, he will leave his old habitation a beggar, without a pice to support himself or his starving family, and without a bullock or plough, or any other means to cultivate any new farm. Thus he is in a state of thralldom to his zemindar worse than slavery. * * Summary laws and attachment give the zemindar a handle to seize a poor fellow's property, and its recovery is about as probable as if it had fallen into the hands of dacoits. There is no occasion, I feel satisfied, when so much oppression is practised, as when a ryot is known to be meditating the relinquishment of his jote. As the law now stands, he has two alternatives—to remain and bear as best he can a grinding taxation, or to fly, a beggar and a vagabond.

(c).—*Mr. A. J. M. Mills, Judge, Sudder Court (31st August 1852).*

The zemindars or their agents almost invariably deny any knowledge of a ryot's wish to relinquish his lands, if it should happen, which is generally the case, that the land be unprofitable, and the ryot is

thus compelled to continue the cultivation of his fields at a ruinous loss to himself; he can only relinquish his land by emigrating, and then he must depart stealthily or leave all his stock behind him, which is immediately attached by the landlord for balance of rent, whether due or not.

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Para. 13, contd.

(d).—*British Indian Association (24th March 1853).*

At present the ryots have no means, except by a regular suit, of compelling their zemindars to receive their rents, or to accept the surrender of their holdings before the commencement of the cultivating seasons, if no valid objection thereto exists, or of obtaining such remissions of rent as they may be entitled to, under certain circumstances, by the custom of the country, or the conditions of their agreement. They are consequently liable to be harassed by their landlords, whenever the latter may see fit to oppress them.

Six years later (14th February 1859) the Association conceived the happy thought that if ryots were no longer to be forced to cultivate bad land, at a ruinous loss, for the zemindar's behoof, the zemindar should be empowered to eject them from good land which they wished to keep as inheritance from their fathers. The Association conjured the Legislative Council of India to abstain from a measure fraught with such mischief as the ryot's deliverance from what the Editor of the *Hindoo Patriot* and others had termed "predial bondage." With playful logic the Association observed:—

Section XII gives the ryot the liberty of relinquishing his holding, whether held for years or in perpetuity, provided he gives to the zemindar timely notice of his intention; and if the zemindar refuse to accept or sign any notice so given, the Collector shall compel him to do so. Thus a ryot will have the freedom of violating his own engagement whenever he chooses to do so, but the zemindar must continue bound by the terms of his agreement. Your petitioners believe that rights must be reciprocal, or there can be no justice. When the ryot is readily invested with the right of relinquishing his lands, equity demands that the zemindar should have the privilege of ejecting his tenant, whether with or without engagement, when reasons for so doing exist. Your petitioners are, however, aware of the consequence which such a state of things will lead to, and they therefore recommend that no right fraught with such mischief be conceded to one party to the prejudice of the other.

The benevolent soul of Cornwallis longed to secure the fruits of their own industry for ryots "whose labours are the riches of the State." The creatures of his benevolence, catching the spirit of his zemindary settlement, and animated with a love of country and of ryots whom Lord Cornwallis had confided to their cherishing care, solemnly denounced the injustice and wrong of liberating ryots from the cruel

APP. XIX. bondage of *Huftum* and *Punjum*, and the predial slavery of unavailing *istafas*.

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OCCUPANCY
RIGHTS.

Para. 13, contd.

III.—RYOTS HELD WITHOUT POTTAHS.

(a).—*Bengal British Indian Association (14th February 1859).*

(1). The earliest law on the subject of pottahs attached a heavy penalty to the withholding of pottahs by the zemindar. No case can, nevertheless, be cited as having ever been instituted by a ryot in enforcement of this privilege, thereby clearly indicating¹ the inutility of the rule, and the same not having been dictated by the requirements of the country.

(2). The ryot, except when money is to be laid out in the improvement of his holding, prefers cultivating and giving up land at his pleasure, and giving notice of his intention, before the season of cultivation, to being bound down to a certain spot for a fixed period by the terms of a kabuliut. He is also in the habit of varying the extent and locality of his cultivation; for as he never manures² the soil, he finds it profitable to abandon a spot which he has impoverished by cultivation, and take up another which has been invigorated by lying fallow or by the deposit of fresh soil; and in such cases he pays rent according to the quantity of land ascertained to be covered by his crops.³

(3). Hence the original law in reference to the exchange of pottahs and kabuliuts has never come into operation. * * It is not the fault of the zemindar that the earliest law on the subject has been rendered inoperative, and that fifteen-sixteenths of the tenures in Bengal are at present held without the interchange of pottahs and kabuliuts.

The Association forgot the facts in Appendix X, para. 7.

(b).—*Select Committee on Bill of Act X of 1859 (26th March 1859).*

Considering the very great extent to which the practice of cultivating without written engagements prevails, and the indisposition said to be shown by the ryots in many parts of the country to execute such engagements, we think that it will not be expedient to insist upon the existence of a kabuliut as a necessary condition to the exercise of the right of distraint.

(c).—*Mr. Justice W. Seton-Karr (2nd June 1864).*

(1). Leases for limited periods, between zemindar and ryot, for a distinct series of years, though common in parts of Behar for instance, are, in other parts of the country, somewhat unfamiliar to the peasantry; though ryots and under-tenants are in the habit of giving out their own rights to others of the same rank and position as themselves, on leases for limited terms.

(2). Between many zemindars and ryots there has been no interchange of pottahs and kabuliuts at all. The ryot may be found holding on, as

¹ Indicating, rather, the custom of the country by which resident cultivators could take up lands subject to payment of the ancient customary rate.

² See, however, Association's testimony in Appendix XVIII, para. 2.

³ This mode of payment, without previous settlement in a lease of the rate per beegah, implies the existence of well-known pergunnah rates.

his father did before him, under an implied contract that he would not be turned out so long as he paid his rent. APP. XIX.

(3). When there has been such interchange, the ordinary form of pottah specifies no term of years whatever, unless it be where the rent is declared not liable to enhancement, and where the tenure is granted in perpetuity to be held from father to son. It is certain, too, that in the earlier decisions of the late Sudder Court, or until the last few years, a lease so awarded was held terminable only by the consent of both parties, and not at the option of the one or the other. And it is equally undeniable that, in the general belief of the united peasantry, all cultivators, except the merest tenants for a year or two, are believed to have a right to remain on their lands so long as they pay their rents, and are not liable to dispossession.

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Para. 14.

(d).—*Mr. Justice Sumbhoonath Pundit, Great Rent Case.*

Most of the ryots throughout Bengal hold without pottahs and have seldom given kabuliuts; yet the rents payable by them are known to the parties concerned, and are evident from papers produced when disputes arise.

(e).—*Mr. Justice Norman, Great Rent Case.*

(1). The khoodkashts were generally little disposed to comply with the law respecting pottahs. Their holdings were usually antecedent to written engagements, and they objected to any writing defining the amount of rent payable by them, from an apprehension that it might be regarded as derogating from their previous undoubted rights, and creating a new and less certain title.

(2). The combined effect of the several causes which have been referred to, and mainly the defective legislation of 1793, and the omission of all attempt to define the rights of the cultivators, together with the adverse tendency of subsequent legislation, was that the undoubted rights of the great mass of the cultivators to hold their lands exempt from arbitrary enhancement, and subject only to customary rates of rent, were nearly obliterated and lost. * *

14. These extracts respecting pottahs show that—

I. As under native rule before the decennial settlement, so in 1859, according to the testimony, among others, of the British Indian Association, the mass of the cultivators or ryots in Bengal held without pottahs, under a custom which protected them from disturbance in their possession so long as they paid the rent. This condition involved fixity of rent; for had it left open to the zemindar the power of raising the ryot's rent, the privilege of not being disturbed in possession while the ryot paid the rent would have been nugatory.

II. Except where a rate less than the customary rate was secured by special agreement, the rent which the ryots paid was not matter of contract or bargain. With the several millions of ryots concerned, contract rates were impossible without a record of them in pottahs, and for fifteen-sixteenths of those millions there were no pottahs.

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Para. 11, contd.

III. As under native rule, so in 1859, the rent, not recorded in pottahs, which the millions of ryots paid, was the customary pergunnah rate. Under native rule, this rate was recorded in the registers of village accountants and canoongoes who were independent of the zemindar; in 1859, the record was in accounts under the control of the zemindar, and, thus far, the vitiated record was unsatisfactory, compared with that under native rule; but the binding force of custom in India, receipts for rent, and the happy circumstance that the exactions of zemindars down to 1859 were generally in the form of *abwabs* separate from the customary pergunnah rate, did afford to the ryot a security resembling somewhat that under native rule, though an imperfect security.

IV. In the ryotwar territories in the Madras and Bombay Presidencies, the Government, with all its resources and with its liberal allowance of land to village officers, is quite unequal to collecting rent from each ryot at an assessment varying each year. The work of collection is lightened, from the necessities of the case, by two rules—*1st*, the rate of assessment holds good for thirty years; *2nd*, the area of land cultivated by each ryot is not measured yearly, unless he demands a variation of the amount of his assessment for the particular year. The zemindars have not the same resources as the Government for keeping up liberal village establishments, while their desire for the largest possible net profit, through keeping down the strength and cost of village establishments, is stronger than that of a Government. Their interest and necessities, in respect of the cost of village establishments, coincided thus, until 1859, with the binding force of an immemorial custom, in preserving intact the ancient pergunnah rate, and levying *abwabs* in the form of percentages on that rate; for in this way only could the zemindar know the amount of his demand against each ryot, and maintain some check over his village gomashas for accounting to him for collections of the entire demands.

V. Thus, under I, the immemorial custom, more ancient than law, under which resident cultivators cultivated land in their villages without let or hindrance from the zemindar, and without a pottah from him, subject only to payment of the established pergunnah rate, continued down to 1859, on the unimpeachable testimony of the British Indian Association; while the feelings of the ryots, so tenacious of custom, especially of customs relating to land, and the interest of

the zemindar, coincided in preserving for the ryot the tradition, and for the zemindar the record, of the ancient established pergunnah rates.

VI. In other words, the three requisites for the growth of occupancy right,—*viz.*, an ancient custom not abrogated by law, the free occupation of land by resident cultivators subject to payment of customary rent, and the means of ascertaining what the ryot should pay according to custom, irrespective of leases which did not exist for fifteen-sixteenths of the cultivators,—all remained in force down to 1859.

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Para. 15.

VII. If the ancient pergunnah rate was vitiated in any measure by oppressions or exactions of the zemindar, in violation of the deed of that permanent zemindary settlement which constitutes the only charter of his rights, the wrong, if it be not turned by Nemesis to the zemindar's prejudice, should at least not redound to his advantage and to the ryot's detriment, by operating so as to vitiate the ryot's right of occupancy. All that the zemindar exacted by oppression, beyond the pergunnah rate which was expressly made binding on him by the Regulations of 1793, was illegal, and outside the cognizance of the Courts, unless for the punishment of the zemindar.

15. It is not surprising, therefore, that, as in Mr. Holt Mackenzie's time in 1830, 'so in 1857-58, the mass of the cultivating ryots in Bengal were khoodkashts. Thus:—

I.—Protestant Missionaries residing in or near Calcutta (9th March 1858).

The khoodkasht, Portrick, resident ryots of Bengal, constituting the most valuable and by far the largest portion of the peasantry, have now, in truth and justice, a tenure of a freehold nature, in which they are entitled to protection.

II.—Zemindars of 24-Pergunnahs (28th February 1857).

The tenures enumerated in what are called the exceptive clauses of Section XXVI of Act I of 1845, *viz.*:—

(1).—Tenures which were held as istemraree or mocraree at a fixed rent more than 12 years before the permanent settlement.

(2).—Tenures existing at the time of the decennial settlement, which have not been, or may not be proved to be, liable to increase of assessment on the ground stated in section 51, Regulation VIII of 1793.

(3).—Lands held by khoodkasht or kudeemco ryots having rights of occupancy at fixed rents, or at rents assessable according to fixed rates under the regulations in force

do not stand in need of such security, and these comprise the tenures by which the vast mass of cultivators hold the lands they cultivate; and almost all resident tenants hold the lands on which they reside.

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ACT X OF 1859.

Para. 16.

16. The two great changes introduced by Act X of 1859 were in the status of the ryots, and in the maximum of rent payable by them, *viz.* : --

(1st). As to status: Until 1859, the cultivators were classed as resident and non-resident; since 1859, they have been classed as occupancy and non-occupancy ryots. This change of classification involved a real change of status, inasmuch as before 1859 a zemindar could not prevent the growth and maturity of occupancy rights in a resident cultivator whereas since 1859 he, by preventing occupancy for more than twelve years at the same rent, has been able to check the growth of occupancy right.

(2nd). As to rate of rent: Until 1859, the pergunna rate established by ancient custom limited the demand on the ryot; since 1859, an equitable rate of rent, to be determined on principles not fixed to this day, have unsettled the rights and the status of the ryot. The act was meant for the ryot's protection; but, with the usual devil's luck of zemindars, it is working to his undoing.

17. In both these particulars there has been a breach of the engagements at the permanent settlement, in which the faith of Government was as solemnly pledged to the ryot as to the zemindar; and perhaps this breach of faith has worked more injuriously through the alteration of the maximum of the rate of rent than through the direct alteration of the *status* or occupancy right of the ryot. For it was only too truly observed, in Mr. Secretary Grant's letter dated 10th February 1840, that "the right to enhance according to the present value of the land differs not in principle from absolute annulment" of the tenure.

18. Certainly these so great changes in the *status* and privileges of the ryot were not contemplated,—nay, the reverse of these changes was contemplated,—in the opening of the correspondence which resulted in 1859 in the passing of Acts X and XI of that year. The Bill relating to Act X was introduced into the Legislative Council on 22nd December 1855; that relating to Act X on 10th October 1857. Among the reports elicited by the Bill dated 22nd December 1855, the only paper which discussed the *status* of ryots and the rent payable by them was one by Mr. A. Sconce Judge of the Sudder Dewanny Adawlut, dated 4th April 1857.

I.—AS TO STATUS OF RYOT.

(a). Who is a *khodkasht* ryot? He is otherwise called a *kudeeme* ryot and a resident hereditary cultivator. In a general sense, as we all

imposed under any pretence whatever. Such was the principle of our primary laws. At the time that the sudder jumma payable by proprietors was fixed for ever, a somewhat similar announcement was made of the expectation of the legislature that the rents of ryots should not remain undetermined; that it was possible to ascertain and express in one sum the rent thus paid or fairly leviable; and that rents unfairly assessed should be susceptible of re-adjustment.

(d). These rules applied generally to all ryots; and with respect to khoodkasht ryots in particular, it was provided (clause 2, section 60, Regulation VIII of 1793) that their rents should not be enhanced *except upon proof* that they had been settled by collusion; or that the payments made by them within the previous three years had been below the pergunnah rates; or (an alternative which applied specially at the time of the permanent settlement) upon a general measurement of the pergunnahs for the purpose of equalising and correcting the assessment.

Mr. Sconce missed the reason why the khoodkasht ryots were specially protected from enhancement. The rents which khoodkashts paid formed and determined, in fact, the pergunnah rate; the pykasht ryots of 1793, when land was waste, and cultivators were few, paid less than the pergunnah rate.

(e). From the section last quoted (60, Regulation VIII of 1793), two fundamental rules of unspeakable moment seem to be deducible. The first is, that when a question arises between a zemindar and a khoodkasht ryot as to the enhancement of the ryot's rent, *the onus of proving the issue rests with the zemindar*. It is not competent to the zemindar to require the ryot to pay the demanded rent, unless he shall prove his right to pay a lower rate; on the contrary, by this law, the *status quo* of the ryot is accepted, and the zemindar who chooses to demand an increased rent is bound to prove, not for any reasons which he may apply to this ryot in common with all the ryots of his estate, but for the very reasons set forth in this section, that his claim is just. The second principle to which I have referred embraces the *ground* of the zemindar's action. Putting aside cases of fraud, *the zemindar must be prepared to show that within three years the ryots' rents have been reduced below the pergunnah rates*. I suppose that these words are to be interpreted as describing a recent reduction; and that it is by no means open to the zemindar to extend the time of the asserted reduction to six years or to twelve years; to declare that the rent paid uniformly for twelve years is an illegitimate assessment, and to demand an increase. Clearly it is the meaning of the law that uniformity of payment for more than three years becomes a fixed rate, not open to revision. If the reduction to which the zemindar might object had not been purposely limited to three years, the law would not have specified three years; and the period of three years being specified, a uniform payment for twelve years, or for any further period, necessarily protects the khoodkasht ryot against a claim for enhancement which the zemindar may bring against him.

(f). Such is the peculiar constitution of the khoodkasht ryot's tenure, which the legislature defined and announced at the same time that it

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Para. 18, contd.

19. Mr. Sconce went to the root of the matter; but no one followed him; other officials contented themselves with running comments on the Bill, and with ventilating their ideas of a fair rent for lands whereon dwelling-houses, manufactories, or other permanent buildings, have been erected, or whereon gardens, plantations, tanks, &c., have been made. The Select Committee on the Bill said nothing on the subject of ryot's rent, neither did the subject elicit any discussion in the Legislative Council; and,—with this so little thought on a matter of the first importance to ryots,—the laws of 1793, and in later regulations, which had exempted ryots from enhancement of their rents beyond the pergunnah rates, as established in 1793 by custom, were put aside, and ryots were subjected to enhancement by an auction-purchaser, “under any law for the time being in force for the enhancement of the rent of such tenures.” This new phraseology, for which there is no warrant in the Regulations of 1793, was adopted for dove-tailing this provision in section 36 of the Sale Act XI of 1859, into the sections of Rent Act X of 1859, which, by violent innovations on the laws of 1793, and consequent infringement of the rights of the ryots, provided for a general enhancement of rents by zemindars, almost whensoever it might please them.

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—
Para 19.

20. The correspondence which led to Act X of 1859 began in 1855, with the expression of a profound sympathy for miserable ryots, and the Act was passed amid self-complacent gratulations on the good work accomplished by Government. Thus—

I. Lieutenant-Governor's minute of 5th March 1855 quoted, with approval, the following testimony of a district officer:—

The curse of this district is the insecure nature of the ryot's land tenure. The cultivator, though nominally protected by regulations of all sorts, has practically no rights in the soil. His rent is continually raised; he is oppressed and worried by every successive teekadar, until he is actually forced out of his holding, and driven to take shelter in the Nepaul Teraie. A list of all the ryots who have abandoned their villages on account of the oppression of the teekadars within the last ten years would be a suggestive document.

II. MR. SCONCE was delighted—

The subject proposed for discussion and enactment in the third and immediately succeeding sections of this Bill is the most important that ever was, or, I may say, that can be, submitted for the consideration of the legislature. These sections present to us the first substantial attempt

APP. XXI. to redeem the pledge undertaken by the Government in clause 1, section 8, Regulation XVII of 1793, "to protect those classes of the people who from their situation are most helpless, and to enact laws necessary for the protection and welfare of ryots and other cultivators of the soil."

TWO GREAT
CHARGES UNDER
ACT X OF 1859.

Para 20, contd.

III. MR. H. RICKETTS in the Legislative Council (16th April 1859).

Setting aside those sections which had led to a difference of opinion (for a moment let them be forgotten), they would all agree that the work upon the whole was a right good work. The Bill, if passed, would benefit all those who in this country were connected with the land; that is, it would benefit about thirty millions of people. That was a pleasant thought for the Honourable Member to put under his pillow and go to sleep upon in a snug little room in the old country. * * No brass, nothing of that sort, would commemorate his career here; but should this Bill pass, he believed that Currie's Act would, for long years to come, as long as we collected land revenue till Bengal was sold, be a lasting memorial that, as in earlier days so to the very last, he worked on with success, and with that right honest spirit which had characterised his whole career as a servant of this Government.

III. And Lord Canning observed—

No one doubts that it has long been desirable that the important questions connected with the relative rights of landlord and tenant dealt with in this Bill should be settled; no objection is suggested to the nature of the settlement which the Bill contemplates; and the Bill is a real and earnest endeavour to improve the position of the ryots of Bengal, and to open to them a prospect of freedom and independence which they have not hitherto enjoyed, by clearly defining their rights, and by placing restrictions on the power of the zemindars, such as ought long since to have been provided. * *

I beg leave to add the expression of my opinion that the author of the measure, Mr. Currie, has established a lasting claim to the gratitude of the cultivators of the soil in Bengal, and to the acknowledgments of all who are interested in their well-being.

new rule of
enhancement of
rent.

21. Yet a Bill passed thus by the legislature amid a chorus of self-gratulation at its own benevolence, and as the *Magna Charta* of the ryots of Bengal, appears to have destroyed the rights of by far the most numerous, important, and valuable class of that peasantry. In the abolition of *Huf-tum* and *Punjum* the Act wrought unmixed good; but in its new principle of enhancement of rent, it introduced unmixed evil; mainly because the legislature did not distinguish between things that differ, but confounded the rights of occupancy ryots in permanently settled Bengal with the essentially distinct and inferior rights of the occupancy ryots in the temporarily settled North-Western Provinces.

22. The rapid stride, taken in so short a period as the interval between 10th October 1857, the date of Mr. Currie's

Statement of Objects and Reasons of the Bill for recovery of rents, and the 26th March 1859, the date of the Bill as amended by the Select Committee, may be seen from the following provisions at those dates, and in the Regulations of 1793, respecting the maximum rate of rent recoverable from a ryot:—

NEW RULE OF
ENHANCEMENT
OF RENT.
—
Para. 22, contd.

I.—REGULATIONS OF 1793.

The pergunnah rate established according to custom.

II.—STATEMENT OF OBJECTS AND REASONS (*10th October 1857*).

(a). The regulations declare that ryots are entitled to receive pottahs for the lands cultivated by them, and to have their rates of rent adjusted on certain defined principles.

(For the defined principles, see Appendix, XVIII, para. 23; or the Regulations of 1812, which the Bill proposed to rescind.)

They also prescribe penalties for the exaction of any excess above the legal rate of rent, or of any unauthorised cess. Further, they recognise the right of all resident ryots to the occupancy of the lands cultivated by them, so long as they pay the established rent.

(b). I have thought it right to re-enact in a concise and distinct form the provisions of the present law relating to the rights of ryots with respect to the delivery of pottahs, the adjustment of rates of rent, and the occupancy of land, and to the prevention of illegal exaction and extortion in connection with demands for rent.

[PP. XIX. year to a resident cultivator, nor (as respects the actual cultivator) to lands sublet to a resident cultivator by a ryot having a right of occupancy.]

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ENHANCEMENT
OF RENT.

para. 22, contd.

IV.—BILL AS AMENDED BY SELECT COMMITTEE ON 26TH MARCH 1859
AND PASSED INTO LAW.

(a).—*Section III.*

Ryots who, in the provinces of Bengal, Behar, Orissa, and Benares, hold lands at fixed rates of rent, which have not been changed from the time of the permanent settlement, are entitled to receive pottahs at such rates.

(b).—*Section IV.*

Whenever, in any suit under this Act, it shall be proved that the rent at which land is held by a ryot in the said provinces, has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the permanent settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.

(c).—*Section V.*

Ryots having rights of occupancy, but not holding at fixed rates, as described in the two preceding sections, are entitled to receive pottahs at fair and equitable rates. In case of dispute, the rate previously paid by the ryot shall be deemed fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act.

(d).—*Section VIII.*

Ryots not having rights of occupancy are entitled to pottahs only at such rates as may be agreed on between them and the persons to whom rent is payable.

(e).—*Section XVII.*

No ryot having a right of occupancy shall be liable to an enhancement of the rate of rent previously paid by him, except on some one of the following grounds, namely:—

1st.—That the rate of rent paid by such ryot is below the prevailing rate payable by ryots of the same class for land of a similar description and with similar advantages in the places adjacent.

2nd.—That the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot.

3rd.—That the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

(f).—*Section XVIII.*

Every ryot having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise; or if the value of the

produce or the productive powers of the land have been decreased by any cause beyond the power of the ryot; or if the quantity of land held by the ryot has been proved by measurement to be less than the quantity for which rent has been previously paid by him.

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Para. 21.

23. There is material difference between the rule of rent in the Regulations of 1793 and in the account of rules existent in 1857, as given in the Statement of Objects and Reasons; but the difference between the latter and the rules as passed into law in 1859 is wider, and the departure from the Regulations of 1793 was serious.

24. The only material discussions of the statement of existing rule which occur in the papers relating to Act X of 1859, and in the discussions in the Legislative Council on the Bill, are contained in the following extracts:—

I.—MR. A. SCONCE (*19th May 1858*).

(a). I would hold to the principle deducible from the rule inculcated in 1793. In Regulation VIII of that year zemindars were told how they were to deal with their khoodkasht ryots. The spirit of the permanent adjustment of the public revenue pervaded the legal relations of zemindars and tenants. The permanent settlement was not one-sided—permanent for the landlord, and not permanent for the tenant. On the contrary, the *de facto* positions of the tenants were accepted as representatives of the available assets of estates, upon which, except for special cause, zemindars could not legally encroach. In support of this statement, it is scarcely necessary that I should refer to sections 51 and 60, Regulation VIII, 1793. But the thorough recognition of the then purpose of the legislature is of immense importance, and the quotation of a familiar law may be pardoned. * *

(b). The rule with respect to khoodkasht¹ ryots was that, except on proof of fraud, no increase should be demanded contrary to previous engagements, *unless it was shown that the rents paid within the three years preceding the settlement* had been reduced below the ordinary pergunnah rate. Here what is remarkable is that enhancement depended upon the reduction having been made within *the last three years*. If the rent of the ryot had been levied at a uniform rent for more than three years, the assessment could not be revised. This law seems to me to furnish the best authority for determining the fixity of rents. The rule has been in force from 1793 downwards;—supposing a khoodkasht ryot to have paid his rent for six years, the plea that the rate chargeable on him was too low, could not be heard. In 1793 he was secured by this law, and the law cannot be less a protector to the ryot now. In 1793 the rule was that the assessment of land held under a prescriptive right of occupancy, might be revised on proof that within three years the rent had been reduced below current rates; and the principle to which practical effect was thus given appears to be necessarily based on the admis-

¹ Mr. Sconce erred in supposing that this rule referred to the mass of khoodkasht ryots; it referred to the exceptionally few who paid less than the pergunnah rate.

APP. XIX. sion that *the payment of a uniform rent for more than three years* established a prescriptive right to the continuance of that payment in future years.

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OF RENT.

Para. 24, contd.

(c). (1): And further, I conceive that the constitutional theory of the permanent settlement did effectually embody permanence of assessment to the tenant as well as to the zemindar. This truth is too precious to be let slip. It applies to other tenants as well as to prescriptive occupants of land; but it applies also to these. The existence of the tenancy of land, distinct from that of a tenant-at-will, or of a temporary leaseholder, entered into the definitive bases of the settlement. The rent assets derivable from these permanent tenures were the fixed assets of the settlement by which the sudder jumma of each estate was regulated; and, except upon special cause shown, it was incompetent to zemindars to enhance the rent then leviable. The contract on the part of the State enforced a contract on the part of the zemindar. One portion of the rents of an estate was assumed to be a fixed (though unknown) sum, and the limitation of the demand of the State carried with it the stipulation that the rent payable by this particular class of tenants should be adhered to by the zemindar.

(d). The tenancy of an estate at the time of the permanent settlement was, as it is now, divisible into three broad classes—

1st may be enumerated the class described as dependent taluks.

The tenures included in this general classification are very variously designated, according to the local nomenclature prevalent in each district; but the nature of the tenure in all cases imports a hereditary occupancy at a definite rent;

2nd is the more subordinate class, that may or may not be included in the first, the jotes of ryots holding under a prescriptive occupancy; and

3rd, ryots or other tenants that held only for a time.

(e). As to the first class (in d), zemindars were declared to have no general right of enhancement. The rent then payable by the tenant was accepted as his ultimate liability. By the special and very limited conditions defined in section 51, Regulation VIII, 1793, a zemindar might show cause for raising his demand; but without such special cause the tenure of the tenant was unassailable. The same right is carried down to our day by section 26, Act I of 1845, and again by section 60, Regulation VIII, 1793, as by Act I of 1845 the *existent* rights of the second class are equally respected.

(2). It is for these reasons, I say, that the sudder jumma of the zemindar is not a constantly fixed, and the rent of the tenant a constantly increasing, quantity. Both by law are fixed; and it seems to me it should be our most earnest duty to give effect to the spirit of the law.

(f). There can be no difficulty as to the rent of a jotedar holding land under a prescriptive occupancy from 1793 downwards. I do not speak only of the rate, but of the amount of rent. Rent so long paid cannot, in the spirit of the law, be open to enhancement. * * As to prescriptive rights of occupancy of a more recent origin, it seems to me that, whatever difficulty as to the right of assessment may be presented, should be solved by law, and not left to the unguided judgment of the

courts. I would propose to declare that a ryot holding land under a prescriptive right of occupancy, who shall have uniformly paid with or without a pottah a definite amount of rent, shall not be liable to a demand for enhancement. Resident—permanently occupying—ryots are not beholden to zemindars for their rights. If upon any point we are competent to exert the sacred force of common law in this country, it is this—labour and occupancy make the right of the prescriptive ryot. By Regulation VIII, 1793, the revision of a prescriptive jotedar's assessment was limited to reduction effected within three years only; for later titles I propose twelve years.

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Para. 24, contd.

II.—MR. H. T. RAIKES (*17th June 1858*).

(a). (In a passage quoted in Appendix XVIII, para. 28 s III, where the fallacy in that passage is exposed, Mr. Raikes stated that, under the law as then existing, auction-purchasers were entitled to raise the rents of ryots at discretion.)

(b). The right which auction-purchasers have been held to acquire under those laws is the right to raise the rents of the cultivators, open to enhancement, by *competition*; and it is obvious that if rates are determinable by a particular standard only (as proposed in section 3 of the Bill), when that standard is once reached, enhancement is illegal, and the power to raise the rent by competition rates no longer exists.

(But this is exactly what the Regulations of 1793 contemplated; see Appendix XVI, paras. 24 to 26.)

An auction-purchaser, therefore, acquiring an estate in which the rents have been already regulated on the principle of the Bill, could neither enhance at discretion nor eject, and must content himself with the rents paid to his predecessor.

Evidently Mr. Raikes, in his zeal for the auction-purchaser, forgot the principle on which any power of enhancement was conferred by the Sale Law, *viz.*, that of putting the auction-purchaser in the place of the original engager in 1793;—when the rents of the ryots were already raised to the standard pergunnah rates, there was no conceivable ground for honest pretensions to the power of yet further enhancement.

(c). My own opinion is, that the principle of the *present* law should not be changed after so many years' continuance. The zemindar, as constituted by the perpetual settlement, is the party entitled to derive benefit from any rise in the value of land consequent on the increase in the price of landed products.

(Not so; see Appendix XVI, para. 28.)

This he cannot receive if rates are not liable to increase, while a permanent fall in the value of productions must compel him to *lower* the rates, or his land will be thrown out of cultivation. To make the ryot's tenure permanent and his rent *fixed* is to aggrandise the ryot at

APP. XIX. the expense of the zemindar, and is totally opposed to the *system* which recent legislation, through the Sale Laws, has introduced into most zemindaries in Bengal.

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OF RENT.

Para. 21, contd.

And so Mr. Raikes held that a Sale Law which had existed for only sixteen years, and under which but few estates had been sold for arrears of revenue, introduced a new system of enhancement of rent into most zemindaries in Bengal.

25. In the proceedings in the Legislative Council there was no examination of the rule of rent to which the ryot was entitled under the Regulations of 1793; even the statements of rule in the preceding extracts were not discussed. Clearly, no one, except Mr. Sconce, cared to examine what rule of rent was assured to the ryot under the settlement of 1793. Everybody, as will be presently seen, discussed the subject of rent (the one all-important matter for the ryot) as if the rule of rent should be what seemed good in each gentleman's own eyes, without reference to the obligations to which the faith of Government was as solemnly pledged to the ryot as to the zemindar in the settlement of 1793. There were notions that the illegal exactions of zemindars, and Sale Laws of limited operation,—and of still more limited effect and scope in the comparatively few zemindaries in which the Sale Laws, at least of 1841 and 1845, did operate,—had left the ryot's rent at the mercy of the zemindar: it did not occur to those gentlemen that if the pergunnah rate mentioned in the deed of the zemindary settlement was obliterated, the deed was broken, and that zemindars who had infringed the deed should not have been allowed to profit by their own wrong.

26. The following extracts contain all the material comments which Mr. Currie's Bill elicited respecting the definition, for the future, of the rates of rent properly leviable from ryots.

I.—ZEMINDARS RESIDING IN DACCA (5th June 1856).

Your petitioners beg to represent that the difficulties under which they lie are such as they ought not to be compelled to encounter. Your Honourable Council must be well aware that the prices of produce of all descriptions have been steadily rising for many years, till at the present period they may be said to quadruple the amount they were twelve to fifteen years ago. The profits of this advance in prices have, during that whole period, fallen exclusively to the share of the cultivator, without any participation on the part of your petitioners, who, for anything that is discoverable, ought to reserve their portion of those profits, since it is obvious that they increase the value of the lands from which they are derived.

(2). Your petitioners claim their quota of the profits alluded to on APP. XIX. the plainest principles of reasoning

(not so very plain, perhaps; see Appendix XVI, para. 28); while those who draw their maintenance from sources of skilled or unskilled labour, are free to advance the remuneration for their time and toil

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OF RENT.
Para. 26, contd

(the zemindars have done nothing, the ryots everything, for the improvement of cultivation),

so as to bear some proportion to the prices of the necessities and conveniences of life; the landholder alone is, by means of such legislation, tied down to an income that cannot be increased to meet the emergency described, and is by this means unjustly reduced to a state of unnatural degradation; his source of income being rendered destitute of that elasticity which would accommodate it to the circumstances of the times; and by this means the rights of your petitioners will be actually deteriorated by the Bill.

Petitioners forgot an important part of their income, *viz.*, that from waste lands brought into cultivation since 1793, on which they paid no rent.

II.—SIR F. J. HALLIDAY (27th November 1855).

Mr. Seonce further proposes to declare the actual rent of ryots with a prescriptive right of occupancy perpetual. But as to this I hesitate, believing it better to leave this to be determined by the new Rent Courts, as it now is in suits in the ordinary courts for what is termed *kohust-i-jumma*.

III.—N. W. PROVINCES.—BOARD OF REVENUE (JUNIOR MEMBER, MR. W. MUIR),—11th December 1858.

(a). I agree with Mr. Currie in that part of the observations contained in his memorandum which impugns Section III. The only standard given for fixing disputed rents at, is the old one of *pergunnah* rates, or customary rates payable for similar adjacent land.

(b). This subject is discussed in paragraphs 134-7 of the "Directions to Settlement Officers." Mr. Thomason there remarks that "both these rules" (that is, *pergunnah* and *adjacent* rates) "are of difficult application." Rent is not a thing to be reduced to any such hard and uniform rule as this. The capacities and advantages of adjacent fields of apparently similar soil may greatly differ. Proximity to a market, or facility of procuring manure, retentiveness of moisture, opening out of new roads, supply of new means of irrigation, are specimens of the natural as well as artificial causes which render it impossible to fix arbitrarily the rent of land by the standard proposed, and which may frequently cause the value of the same land to vary at different times. The caste and habits of the cultivators are also elements which cannot be overlooked.

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Para. 26, contd.

All this may be very true; but most of these difficulties are the creation of European settlement officers, who, in enhancing the rents of zemindars or of a village, had to distribute this enhanced rent among the ryots in the record of rights. Under native rule, the pergunnah rates in the North-Western Provinces, though not the same in any two villages, yet were readily distinguishable by the natives of each village. (See Appendix V, para. 2, section V.) Sir William Muir's enumeration of difficulties which arose out of the enhancement of the Government demand upon the zemindar or village, and from the consequences to ryots of that enhancement, in the temporarily settled North-Western Provinces, only shows the irrelevancy of his remarks to the rates assessable upon ryots in permanently settled Bengal.

(c). The proprietor should have the right of trying these points: (1) whether the rent which any cultivator having the right of occupancy has been paying is a fair and adequate rent; (2) and further, whether, admitting the rent to have been formerly fair, circumstances have not since arisen to justify an enhancement. And the cultivator having a right of occupancy should (3) also possess the power of suing to determine whether circumstances have not arisen to deteriorate the value of his tenure, and justify him in demanding a reduction on the prescriptive rent.

These three points arise manifestly out of the enhancement of the zemindar's assessment, and from the consequent enhancement, or liability to enhancement, of the ryot's rent. Where the zemindars' rent is raised in proportion to a rise of prices, perforce the ryots' rents must be raised in the same proportion to enable the zemindar to pay his new rent. This consideration alone warrants the enquiry on points (1) and (2); there is nothing respecting them in the regulations of the permanent settlement which, in fixing the zemindar's rent for ever, and in limiting his demand upon his ryots to the pergunnah rates of 1793, consistently withheld from him the power of enhancing any rent beyond those pergunnah rates. The third point, too,—*viz.*, the ryot's title to abatement of his rent on account of any deterioration of his land,—implies also some previous enhancement of his rent. In the permanently settled provinces of Bengal no ryot, paying the pergunnah rate of 1793, could expect abatement of his rent on account of deterioration of his land, unless the zemindar obtained from Government an abatement of his jumma from the same cause.

IV.—N. W. PROVINCES.—MR. CHARLES CURRIE.

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The disquisitions of this gentleman need not be quoted at any length. He was possessed with an idea that English landlords regulated their farmers' rents by Malthus' theory of rent; and he held advanced views to the effect that zemindars and ryots might be left to settle rents as best they may.

NEW RULE OF
ENHANCEMENT
OF RENT.

Para. 26, contd.

(a). Advantage should be taken of the occasion to review the whole subject connected with rent of land, and carefully to consider whether the regulations are capable of being modified or altered, not merely in word, but in principle, * * the true principles of political economy

(that is to say, the rights of ryots under the law of 1793 were to be set aside and be replaced by others drawn from Mr. Currie's intuitional consciousness).

(b). The system of arbitrarily determining the amount of rent to be paid by tenants is contrary to the true principles of political economy, and should not be adhered to longer than is absolutely necessary. The necessity no longer exists. * * The country may be said to have obtained (attained) a natural state, and there appears no necessity for a deviation from the acknowledged principles of political economy.

And then followed a scrap of political economy which was beside the question of ryots' rights, but which sank deep into the mind of Sir Barnes Peacock, viz., "rent is the surplus profits of land after deducting the wages of labour and the interest of capital expended on the land." The only rent contemplated by the authors of the zemindary settlement was not rent.

V.—BENGAL BOARD OF REVENUE (1st December 1859).

Section III.—To the first four lines of this section the Board have no objection to offer. But they (Messrs. Dampier and Stainforth) object decidedly to any attempt on the part of Government to interfere with the market price of land, and to compel the zemindar to grant pottahs at the pergunnah rate. In practice, perhaps, in the greater portion of Bengal, this section would be a dead letter, as there is no such thing as a generally recognised pergunnah rate. But the Board are of opinion that the proposed interference is very objectionable, and they recommend the cancellation of the section from line 5 *ad finem*.

VI.—MR. C. STEER, CAMP CHITTAGONG. (27th August 1858).

(a). If a resident ryot has a right of occupancy so long as he pays the rent demandable, if he is entitled to demand a pottah, and that pottah he is entitled to claim at pergunnah rates, those rates, as they prevail at present, will be the rates always. I am altogether unable to see how, except in very few and exceptional cases, a zemindar can manage to raise his pergunnah rates.

APP. XIX. This precisely was the letter and intent of the Regulations of 1793 (Appendix XVI, paragraphs 16 and 24 to 28); but Mr. Steer forgot this, and proceeded to remark—

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OF RENT.

Para. 26, contd.

(b). Of course, if the principle of extending to the landlord any share in the growing prosperity of his estate is a bad one, then let the Bill pass; but if that is not the case, there should be some means provided for the regulation of the pergunnah rates from time to time. The Collectors might be empowered to do this, say every five years.

Mr. Steer overlooked (1) that in the Madras and Bombay Presidencies the ryot has the advantage of an assessment which is fixed for 30 years—not for five years; (2) the zemindars obtained their permanent settlement under the belief cherished by Lord Cornwallis, that a rent fixed not for five years but for ever, was required to stimulate cultivation, which, since 1793, has been extended by the ryot—not by the zemindar.

VII.—BRITISH INDIAN ASSOCIATION (*14th February 1859*).

(a). Every one at all conversant with the land revenue of the country must be well aware that the rates at which the different lands in close contiguity to each other are held vary considerably. A zemindar, alive to his own interests, may have revised the assessment according to the capabilities of the land for the time being, taking into consideration all the circumstances which should regulate the rate of land

(the Association assumed the legality of any such revision which had the effect of raising the previous pergunnah rates; but clearly it was illegal,—see Appendix XVI, paras. 16 and 24 to 28);

whilst another, regardless of his legitimate rights, may have continued the same rates which prevailed some fifty years since, when some parts even of Calcutta were the abode of tigers. What is to guide the Judge in the determination of the rate? The zemindar, in support of his claim, will cite the highest rates obtaining for similar lands adjacent to his, and the ryot the lowest. If the Judge be favourable to the zemindar, he will adopt his evidence; if otherwise, that of the ryot

(this was disrespectful to the Courts; but the Association generally writes a humble petition):

or he may form his own opinion from the numerical strength of the testimony produced on either side.

(b). If your Honourable Council wish to adopt a practical instead of an imaginary standard, in cases where the rent is assessable under a fixed rule, your petitioners would suggest the adoption of a certain proportion of the gross produce as the rent exigible from cultivators. Rent, it is admitted, is a portion of the produce yielded as an equivalent for use and occupation of the soil. What is the portion of the produce to be considered as rent? According to the customs of the country from

time immemorial, it is one-half, as determined by Lord William Bentinck App. XIX. in his celebrated circular on resumption and assessment, after mature consideration of all the authorities on the point. Your petitioners believe that your Honourable Council will admit that those to whom the proprietary right in the soil is adjudged are entitled at all times to receive such portion of the produce; and that, in estimating the money value thereof, even the most inexperienced judges cannot err, the points of enquiry being reduced to the quantity and description of the crop which the land sought to be assessed annually yields, and the market value for the time being of the same.

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OF RENT.

Para. 27.

The Association had touchingly alluded to the pain with which they confined themselves to advocating the cause of landholders. Their agony in delivering extract VII b, so deadly to ryots' interests, was intense,—only, however, from the members of the Association having forgotten their rent-rolls; which must show that in no case can the zemindar in reason expect from any ryot anything like half the produce, if he exacts a money rent.

VIII.—SELECT COMMITTEE (26th March 1859).

Section V.—The original Bill, following the phraseology of the existing law, declared ryots not holding at fixed rents entitled to pottahs at pergunnah rates. This expression has been objected to, on the ground that there are really no known pergunnah rates. The recognition of a right of occupancy in the ryot implies necessarily some limit to the discretion of the landholder in adjusting the rent of the person possessing such a right. There was a discussion on this subject between the Government of the North-Western Provinces, the Sudder Court, and the Board of Revenue, and it was then apparently admitted that it was the acknowledged right of the ryot to hold at "*customary and fair*" rates." We have adopted similar phrases, and in this section and Sections XVII and XVIII have endeavoured to lay down rules by which the "fairness" of the rates may be ascertained.

27. Thus the papers relating to Mr. Currie's Rent Bill show that, in defining the rent recoverable from the ryot in accordance with the settlement of 1793, the Legislative Council was not assisted by the Bengal Government or its officers with any remarks or discussions adequate to the importance of the subject; and that, in default of these, they were led astray by remarks of the Agra Board of Revenue, which, however true of the temporarily settled North-Western Provinces, were irrelevant, or were not necessarily applicable to the status and privileges of the ryot in permanently settled Bengal; for whereas the North-Western Provinces ryot's liability to enhancement of his

APP. XIX. rent from a rise of prices followed from the increase of his zemindar's assessment from the same cause, no similar liability was incurred by the Bengal ryot, whose zemindar's rent was *not* increased on account of a rise of prices.

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ENHANCEMENT
OF RENT.

Para. 27, contd.

28. In the proceedings in the Legislative Council, the only discussion respecting rent was raised on an amendment moved by Mr. H. Ricketts (9th April 1859), that "the following new section be introduced after Section XVII" (para. 22, Section IV of this Appendix):—

If in a suit for enhancement or for diminution of a ryot's rent, the evidence produced by the parties shall fail to show what rate of rent is equitably assessable on the land in the ryot's possession, in such case the Collector shall proceed to ascertain the market value of the average gross produce of the land, and shall declare two-fifths of the ascertained value to be the rent payable for such land. Provided always that it shall be competent to the Court to declare a less sum than two-fifths of the value of the gross produce to be the rental payable, if there are any special circumstances owing to which the cultivation of the land must necessarily be attended with more than ordinary expense. When the rent of a ryot's holding has been ascertained as above provided, it shall not, unless on special grounds, be again liable to question for a period of twelve years.

29. The proportion of the gross produce to be declared payable by the ryot as rent was a very serious, all-important subject for the ryot; but Mr. Ricketts did not profess to know much about it: in a matter which, according to its determination, might condemn the ryots to predial bondage, Mr. Ricketts had sought no better guide than his own impressions.

With regard to the objection against declaring two-fifths of the ascertained value to the rental payable, he was under the impression that he had proposed a portion less rather than more than that usually taken when rent was paid in kind. In laying down an arbitrary share which could not be in all cases exactly suitable, he desired to err on the side of the ryot. He left the question to the Council,

who negatived his amendment.

30. This, and some pleasantries about the tests for discriminating soils which the Bombay Regulations provide, were all that Mr. Ricketts contributed to a right decision on the subject.

31. Mr. Currie rightly observed—

He did not know upon what ground the Honourable Member had assumed that two-fifths of the ascertained value of the gross produce

was the rent payable for the land. It was quite true that, when rents were paid in kind, it was the practice for the zemindar and ryot to take half and half,—grain rents obtained generally where, for want of means of irrigation or other causes, the crop was uncertain,—and if the zemindar shared the produce, he also shared the risk. But when it came to the commutation of a proportion of the produce into a money rent to be paid under all circumstances, he apprehended that two-fifths would be found generally too high. In the Institutes of Akbar it was prescribed that the share of the Sarkar—that was, the proportion to be paid by the ryot—should in no case exceed one-fourth; and the honourable gentleman had told them that one-fourth was the prescribed proportion in Batavia. But he apprehended that even one-fourth would be found to be very high for a money rent. On the whole, he (Mr. Currie) thought that they would run very great risk in assuming any arbitrary proportion, and he felt confident that the rule prescribed in Section XVII was much safer and more free from difficulty.

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Para. 33.

32. This is the sum of the discussion in Council on the proposal of the Select Committee, that, as in the temporarily settled North-Western Provinces, so in permanently settled Bengal, the ryots' rent should be enhanced to fair and equitable rates for the time being. In the North-Western Provinces, however, this enhancement is allowed, in the present day, only thrice in thirty years; in 1859 such frequent revisions appear not to have been authorised. In Bengal, the Council, though professing to follow the model of the North-Western Provinces, did not prevent enhancements every three or five years.

33. The Regulations of 1793 provided—

I. That the zemindar should have no power of enhancing a rate of rent which had been once accepted by zemindar and ryots as the pergunnah rate (the Council did not examine on what grounds, consistent with the faith of Government, which was as solemnly pledged to the ryot as to the zemindar in the settlement of 1793, the ryot's rent should be declared subject to repeated enhancement).

II. That the amount of rent payable by the ryot, as being conformable with the pergunnah rate, having been once ascertained, that amount should be declared permanent. Mr. Sconce pointed out that this should be done in accordance with the Government Regulations of 1793. His remarks were not noticed, except by Sir F. J. Halliday, who shrank from a discussion of the subject.

APP. XIX.

TWELVE YEARS'
OCCUPANCY
RIGHT.

Para. 34.

34. In the papers relating to Mr. Currie's Bill, the material notices of the rights of occupancy were as follows :—

I.—STATEMENT OF OBJECTS AND REASONS (*10th October 1857*).

The regulations recognise the right of all resident ryots to the occupancy of the lands cultivated by them, so long as they pay the established rent.

II.—N. W. PROVINCES.—MR. E. A. READE, SENIOR MEMBER, BOARD OF REVENUE (*5th May 1858*).

(a). Practically, according to the usage of the country, and where good faith obtains, the inherent right of occupancy of the resident and non-resident ryot is the same : provided always that both are under common bond of fealty to the landowner. This it is, in the main, which constitutes the difference between the ryot who has a right of occupancy, and the ryot who is only a tenant-at-will,—a distinction immediately understood by the use of the vulgar terms *pucka* and *kutchra*, applied equally to chupperbund and pakkhast ryots.

(b). Obviously, where the mouzah is not inhabited or uninhabitable, all ryots are non-resident ; yet such are as much yeomen with right of occupancy of lands which they have cultivated for generations, as they who have as long cultivated lands in villages, properly so called, where they reside.

(c). Then, again, it is quite possible that by division a tract of land may be severed from the parent estate, a new homestead raised, and yet surely, the rights of the old cultivators, who continue to reside as formerly, are not to be affected by the change, though they may be non-resident ryots of the newly constituted mouzah.

III.—N. W. PROVINCES.—MR. W. MUIR, JUNIOR MEMBER, BOARD OF REVENUE (*31st October 1857 and 14th December 1858*).

(a). Section IV goes upon the fallacy of regarding every "*resident ryot and cultivator*" to have a right of occupancy. The subject has been fully discussed in the correspondence which preceded the issue of the Board's circular dated 26th September 1856. This correspondence, including the opinions of all Commissioners and of all Collectors of experience, was ordered to be printed. I have not the collection by me at present, but it distinctly proved that *residence* was not a necessary or expedient condition of right of occupancy. The rule was, upon this correspondence, laid down, in the General Order of the 17th September and the Board's circular of 26th September, as follow,—namely, that twelve years' occupancy gives a fixed title.

IV.—N. W. PROVINCES.—BOARD'S CIRCULAR (*26th September 1856*).

(a). The right of the zemindar to sue in the Revenue Court to eject a tenant-at-will, will only be recognized when the tenant has been less than twelve years in possession. Wherever satisfactory proof of twelve years' uninterrupted possession is brought forward, the summary suit will be dismissed, excepting where the possession is under a written terminable lease.

(b). Where the possession has lasted for a shorter period, and there is no well supported claim on the part of the ryot, in virtue of agreement or lease, to continued occupancy, a decree will be given in favour of the zemindar. The question is independent of the payment by a cultivator, during a term of twelve years, of an unvarying amount of rent. Continued possession for that period, though at different rents, will, equally with occupancy at a uniform rent, bar the summary suit for ejectment.

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Para. 34, contd.

(c). Exception from the growth of prescriptive right has been made in the case of tenures upon terminable lease. Occupancy, extending by a single lease, or by renewed leases, for a period exceeding twelve years, will not bar the zemindar's right to claim ejectment on the expiry of such leases. But there may, in the case of the same occupant, possibly be cultivating prescriptive rights independent of the lease. A pottah for a limited number of years may have been given to a cultivator already possessing a fixed right of tenancy. It will in such case be for the Court to determine whether the occupancy is in virtue of the pottah alone, or whether there is also a right of occupancy independent of the pottah. In the event of such a right being proved, the landlord will not be entitled to claim ejectment.

V.—N. W. PROVINCES.—MR. C. CURRIE.

(a). Hereditary cultivators are an exception to the general rule. Their rights are peculiar to the country, and the landholders are aware that they cannot raise their rents. The fact, however, of their being tenants over whom the landlord possesses no rights beyond the receipt of a fixed rent, is to be deplored, and the class should not, in my opinion, be encouraged.

(b). A cultivator holding a few acres of land cannot be expected to possess capital sufficient to enable him to improve that land to the same extent as the large landed proprietor. But a landholder will never attempt to improve the lands of a hereditary cultivator, knowing that his money would be sunk without a possibility of any profit accruing to himself. The existence of hereditary cultivators and their rights cannot be denied, and these rights should be upheld by legislation.

VI.—SIR F. J. HALLIDAY (27th November 1858).

(a). Khoodkasht and kudeemee ryots I take to be the class intended by the expressions "hereditary ryots holding land at fixed rates," and "resident ryots and cultivators."

(b). Perhaps the opportunity should be taken to define what has always needed definition, namely, the term "khoodkasht and kudeemee ryots." Mr. Sconce, Judge of the Sudder Court, has suggested that, instead of the terms in Sections III and IV of the Bill, there should be substituted the words "ryots having a prescriptive right of occupancy;" and he would fix twelve years as the term of uninterrupted occupancy after which a ryot should come under the description he proposes. To this I would assent, believing that in doing this we shall be discharging a heavy obligation towards the ryots, long unfulfilled by our legislation.

APP. XIX. I would also use means to show that this was the definition of a "khloodkasht or kudeemee ryot" elsewhere alluded to in our Code.

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Para. 31, contd. VII.—MR. A. SCONCE (*19th May 1858*).

(a). In Section IV it is said every resident ryot has a right of occupancy in the land held or cultivated by him. In Section III the words "hereditary ryots" are used. Is there any distinction between the words "resident" and the word "hereditary;" and if there be a distinction, to what does it amount? The right assumed to be vested in a resident ryot is of the highest value, for, paying the rent due from him, his occupancy cannot be disturbed. I suppose that the word "resident" imports permanent residence, or, in other words, hereditary occupancy, and is the English equivalent of khloodkasht or kudeemee ryot, as indicated in section 32, Regulation XI, 1822. This right, however named, seems to be mainly founded on prescription; and perhaps the terms "prescriptive occupancy" best define the existing right, and afford the best guide for testing a disputed tenure by the standard which the law recognises. The first suggestion, therefore, which I have to make is, that the terms used in Sections III and IV should correspond, and that, instead of the words "hereditary" or "resident," should be substituted "having a prescriptive right of occupancy."

(b). I do not say, however, that in using an uniform definition, the difficulties which daily arise for adjustment and adjudication are effectually solved. It may not be doubtful that a khloodkasht ryot has a right of prescriptive occupancy; but prescription grows and is constituted by the effluxion of time, and thus an occupancy which, being immature and new, does not amount to a permanent right, by long recognition became eventually prescriptive. Rights, like customs, may be imperceptible in their origin and progress, which, nevertheless, in time we do not hesitate to characterise and to perpetuate.

(c). The last sentence in Section V of this Bill appears intended to create a right of prescriptive occupancy in favour of a resident ryot with respect to land recently acquired by him. Possession and payment of rent for *three years*, supposing the tenant's right not to be otherwise limited by a written engagement, here create a right of occupancy. This provision, it will be seen, is confined to land newly acquired by resident ryots. Land not before held on a prescriptive tenure becomes, after three years, included within the older land of the ryot, and subject, I suppose, to the same conditions of occupancy; and so, it seems to me, as mere occupation for a limited period restricts the proprietor's right of ouster, a similar provision should be made in favour of other ryots by reason of prolonged occupancy.

(d). I believe that the experience of all of us shows that it is in vain to look for precisely marked distinctions between the old and recent occupancies of ryots. The term *kudeemee* is merely the old *khloodkasht*, which appears to signify the occupancy of land which is peculiarly a ryot's own, and for which others can bring no claim on an equal footing. But distinctions of a broad and general kind are sufficiently noticeable. On the one hand, a khloodkasht ryot is known by a continued occupancy,—

by an occupancy at his own will, if also by the silent sufferance of the zemindar; and on the other, a temporary occupancy is most usually marked by circumstances which are incompatible with a permanent right, such as by recent and accidental acquisition, by variable occupation, or by a lease for a limited period. I should prefer, therefore, to take twelve years' occupancy, recognised by the zemindar—namely, by the receipt of rent, but possibly also by other circumstances—to constitute a right of prescriptive occupancy, except that an occupancy renewable at the discretion of the zemindar may be inferred from the terms of a written engagement, or from the general terms of a deed taken in connection with the circumstances under which the tenure originated, or was continued. Where there is no written engagement, twelve years' occupancy alone will be sufficient to guarantee a permanent right; but if there be a deed without an express condition to quit, the mere termination of the lease will not import a limited occupancy unless that be inferrible from the circumstances of the case.

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Para. 34, contd.

(e). I have said that, with a prescriptive jotedar of 1793, there can be no difficulty: as to prescriptive rights of occupancy of a more recent origin, it seems to me that, whatever difficulty as to the right of assessment may be presented, should be solved by the law, and not left to the unguided judgment of the Courts. I would propose to declare that a ryot holding land under a prescriptive right of occupancy, who shall have necessarily paid, with or without pottah, a definite amount of rent, shall not be liable to a demand for enhancement.

(f). Resident—permanently occupying—ryots are not beholden to zemindars for their rights. If upon any point we are competent to exact the sacred force of common law in this country, it is this—labour and occupancy make the right of the prescriptive ryot. By Regulation VIII of 1793, the revision of a prescriptive jotedar's assessment was limited to reduction effected within three years only; for later titles I propose twelve years. All ryots are not prescriptive ryots; but having defined the nature of a prescriptive ryot's tenure, we should at the same time define the interest which, by the declared principles of the law, should be assured to him.

VIII.—SELECT COMMITTEE'S REPORT (25th March 1859).

(a). We have thought it right to define more particularly the "hereditary ryots" who are to be recognised as having a right to hold lands at fixed rents. The laws in force allude to such right as belonging to "kudeemee ryots," and these have generally been understood to be ryots who have held at the same rate of rent for a period of twelve years before the permanent settlement. We think that, at this late date, no one should be required to prove a title antecedent to the permanent settlement; and we have framed the amended section accordingly, adding a clause which will have the effect of placing a ryot who has held at a fixed rent for twenty years substantially in the position of a ryot who has held from the time of the permanent settlement, unless it be shown by the other party that the rent has varied intermediately.

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Para. 24, contd.

The Select Committee considered an increase of ryot's rent since the permanent settlement sufficient to subject him to enhancement of rent beyond the old pergunnah rate, overlooking, 1st, that in the period of lawlessness from 1798 to 1859 zemindars had ample power and opportunity to wrongfully vary the ryot's rent; and 2ndly, that in the permanent settlement an increase of the pergunnah rate was not contemplated; the permanency of the rate was assumed throughout the Regulations of 1793.

(b). Section VI.—The laws in force speak of "*khloodkasht* ryots"

* Regulation LI, 1795, sec. 10.

" VIII, 1819, sec. XI, cl. 5.

" VIII, 1819, sec. XVIII, cl. 5.

as possessing rights of occupancy, and in some places the word "*khloodkasht*" seems to be considered as synonymous with "*resident*."* "*Resident*" was therefore the word used in the original Bill. But it has been pointed out by the Western Board that residency is not always a condition of occupancy; and it appears that, after much enquiry, it was prescribed by an order of the Government of the North-Western Provinces in 1856, as most consistent with the general practice and recognised rights, that a holding of the same land for twelve years should be considered to give a right of occupancy. We have followed this precedent and altered this section accordingly.

(c). Sections VII and VIII.—The alterations in these sections followed as a consequence of the former alterations.

35. Mr. E. M. Gordon, member of the Bengal Sudder Board of Revenue, construed the phrase "*khloodkasht* and *kudeemee* ryots" as follows: strictly speaking, a *khloodkasht* ryot is a cultivator whose house is on the estate the land of which he cultivates. Again, long-continued occupation is implied in the term *kudeemee*, as applied to a cultivator. Mr. Forbes had construed *khloodkasht* ryots as including those "whose rent is assessable according to fixed rules under the regulations in force;" and he suggested, in reference to the Sale Act XII of 1841, that a declaratory Act might be issued stating "that the words *khloodkasht* and *kudeemee* are not intended to have a restrictive meaning, but that the exception is intended to include all ryots and cultivators of the soil who, under Sections 54 to 59 of Regulation VIII of 1793, and Sections 6 and 7 of Regulation IV of 1794, are entitled to have their pottahs renewed."

36. As with enhancement of rent, so with occupancy rights, the practice in the North-Western Provinces was followed in permanently-settled Bengal, though fixity of ryot's

rent, which favours the growth of occupancy right, formed part of, and was involved in, the permanent settlement. The subject was not discussed; the only notice of it was in the following passage in a speech by Mr. E. Currie on introducing, on 10th October 1857, his Bill for recovery of rents :

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Para. 36, contd.

The Bill, therefore, commenced with declaring that all ryots of every grade were entitled to receive pottahs from the landholder, declaring the amounts of rent payable by them, and also to have that rent adjusted according to certain fixed rules.

It is also declared that all resident ryots or cultivators had a right of occupancy in the lands held or cultivated by them, so long as they paid the rents legally demandable from them.

These sections contained nothing more than what had been the law since the time of the permanent settlement.

So that, whereas the author of the Bill meant to abide by the occupancy right which the permanent settlement favoured for *resident* cultivators, the Select Committee imported from the North-Western Provinces, and substituted for the Bengal custom, a hybrid occupancy right which favoured *non-resident* cultivators; the Select Committee in effect weakened the position and impaired the status of resident cultivators, by reducing them to the level of non-resident cultivators, and giving to the zemindars the same power over them (as he had over non-resident cultivators) of preventing the growth of occupancy rights, through limitation of pottahs to periods of less than twelve years.

37. But the Select Committee were not content with reducing the resident cultivators in Bengal to the status of occupancy ryots in the North-Western Provinces; they reduced them to a still inferior status; for whereas in the North-Western Provinces the occupancy ryot's rent was not variable in 1859 for the period of the thirty years' settlement, the occupancy ryot, under Act X of 1859, may have his rent raised as often as the zemindar is able to bring him under one or other of the grounds of enhancement which were improvised in Act X of 1859 out of the intuitional consciousness of the legislature. The British Indian Association gave full warning, in their comments on the Bill, of the license into which the zemindars would turn the liberty of enhancing rents. In their petition of 14th February 1859 they observed—

Section 61 of the Bill limits the period of pottahs in permanently-settled provinces to ten years. Considering that the value of land is rapidly increasing, and that the rate of tenancy is constantly changing, especially with the increased demand for the produce of the country, and

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Para. 37, contd.

viz., about three to five years, although in Southern India the ryot's rent is fixed for thirty years. But the Association showed, thus, not for the first time, that the interests of the ryots, whose labours are the riches of the country which the Association loves, and of the courts which decide yearly several hundred thousand suits for enhancing rents, are safe in its keeping. "Whether for good or for evil (your petitioners (May 1857) would fearlessly submit to fair enquiry), the condition and the interests of under-tenants and of all below the sudder malgoozar, the zemindar, have been legislatively entrusted to him," to the impoverishment of the ryots in Behar and through the greater part of Bengal and Orissa.

38. Act X of 1859 affords one other illustration of how lamentably injury to ryots' rights was evolved out of legislator's ideas of the fitness of things, and not from any practical need for the new legislation. Mr. Currie observed, in his statement of objects and reasons—

(a). I have added a section (also in the spirit, but beyond the letter, of the existing law) declaring landholders entitled to receive kabulyets, or written engagements, from their ryots. It is only fair that, when a ryot has a right to demand a pottah, the landlord should have a right to demand a kabulyet. It is for the interest of the ryot himself that written engagements should be exchanged in all cases; (b) *and as in a later part of the Bill I propose that distraint should be allowed only when the distrainer holds a kabulyet, it is necessary to provide landlords with the means of enforcing the delivery of such documents.*

The ground for the innovation, which was urged in the passage (b) in italics, was cut away by the work and the report of the Select Committee on the Bill. They observed—

Considering the very great extent to which the practice of cultivating without written engagements prevails, and the indisposition said to be shown by the ryots in many parts of the country to execute such engagements, we think that it will not be expedient to insist upon the existence of a kabulyet as a necessary condition to the exercise of the right of distraint. Such a request might have the effect of increasing the unwillingness of the ryots to an interchange of agreements, and would probably give rise to such a multitude of suits on the part of landholders for the delivery of kabulyets as the Collectors would find it difficult to dispose of. We have, therefore, struck out the provision.

So that the sole reason for empowering zemindars to institute suits for the execution of kabulyets was Mr. Currie's idea of the fitness of things, as expressed in the

passage (a) in the preceding extract. The lamentable oppression of ryots under the regulation requiring zemindars to grant pottahs (Appendix X, para. 11) was forgotten when this new law empowered them to exact kabulyets.

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UNDER ACT X
OF 1859.

Para. 41.

39. Thus Act X of 1859 introduced three serious innovations, *viz.*—

1st.—Repeated enhancements of a ryot's rent, though the Regulations of 1793 contemplated but one enhancement, *viz.*, to a pergunnah rate fixed in money, and therefore fixed for ever, independent of subsequent rise of prices, unless the produce were changed, when the rate for the altered produce became the permanent rate.

2nd.—Obliteration of the occupancy right of resident cultivators (which, under the old law, was not dependent on the sufferance of the zemindar), in favour of an inferior right of occupancy for resident and non-resident cultivators, the growth of which the zemindar was empowered to interrupt.

3rd.—Power to the zemindar to exact kabulyets from ryots, and thus to harass them about enhancement of rents.

40. These serious innovations on the status and privileges of ryots, as left by the Regulations of 1793, raised no discussion in the Legislative Council;—the only subject of earnest animated debate was whether rent suits should be tried in Civil or in Revenue Courts: the Barrister Members of the Council contended for the Civil Courts, the Civilian Members on behalf of the Revenue Courts; in the eager strife as to which courts should have the ryot, the great changes in his *status* which the law involved were not regarded, and the ryot was left as dead,—as when Satan and the Archangel contended for the dead body of Moses.

41. The legal *status* of the resident cultivator was injured by Act X of 1859; but certain vicious accidents of the relation between zemindar and ryot were put an end to by the Act; *i.e.*, the *Huftum* and *Punjum* Regulations were repealed, and the power of summoning ryots to his cutcherry was taken away from the zemindar. On these subjects there is full information in Appendix XI; but evidence tendered before the Indigo Commission in 1860 brings the information down to a later date.

I.—MR. J. H. REILY, *Commissioner of Sunderbuns* (27th June 1860).

(a). 2561.—I consider the zemindary power in the mofussil to be omnipotent, and when once the planter is zemindar, nothing can oppose him.

APPENDIX XX

ENHANCEMENT OF RENT FROM 1859.

The Great Rent Case.

In the Great Rent Case which was decided by a Full Bench of the High Court on 19th June 1865, the defendant-ryot in the suit claimed to hold at a fixed rent, but his claim was disallowed, and he was declared to have only a right of occupancy.

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Para. 2.

With a view of fixing the rent to which the zemindar is entitled, the Division Court has remanded the suit; but in consequence of conflicting decisions on the point, it was in doubt as to the particular principle on which the calculation should be made. It therefore referred the subject to the Court at large, in the following terms:—

(1). When there has been any increase in the value of the produce, arising simply from a rise in prices, and not from the agency either of the zemindar or the ryot, and the zemindar is entitled to a new kabulyet from an occupancy ryot for an enhanced rent, is the fair and equitable rate to be awarded that which might be obtained by commercial competition in the market, or is it a rate to be determined by the custom of the neighbourhood in regard to the same class of ryots?

(2). If the customary rate of the neighbourhood has not been adjusted with reference to the increased value of the produce, then on what principle is the customary rate to be adjusted?

2. The enquiry had reference to the following parts of Sections V and XVII of Act X of 1859, *viz.*—

The specific
sections of
Act X of 1859 to
which the
question relates.

I.—SECTION V.

Ryots having rights of occupancy, but not holding at fixed rates, as described in the two preceding sections, are entitled to receive pottahs at fair and equitable rates. In case of dispute, the rate previously paid by the ryot shall be deemed to be fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act.

II.—SECTION XVII.

No ryot having a right of occupancy shall be liable to an enhancement of the rent previously paid by him, except on some one of the following grounds, *viz.*:—

(a). That the rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages, in the places adjacent.

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STATED.

Para. 2, contd.

(b). That the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot.

(c). That the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

3. The Chief Justice, Sir Barnes Peacock, was in the minority, and was alone in his opinion; the other fourteen Judges formed the majority. Sir Barnes Peacock, in a previous judgment in a similar case, had decided as follows:—

I. A definition more useful for our present purpose is that given by Mr. Malthus in his *Principles of Political Economy*. He there defines rent to be “that portion of the value of the whole produce which remains to the owner of the land after all the outgoings belonging to its cultivation, of whatever kind, have been paid, including the profits of the capital employed, estimated according to the usual and ordinary rate of agricultural capital at the time being.” The word “outgoings,” used in the above definition, must include a fair and equitable rate of wages for the labour employed in the cultivation of the lands, whether that of hired labourers paid out of capital, or the labour of the ryot himself or of his family, and also, when the rent is paid in money, the labour and expenses of carrying the produce to market, or of converting it into money.

II. We can only say that, in point of law, the landlord is entitled to receive a fair and equitable rent, and that he is entitled to have it so adjusted, with reference to the grounds of enhancement, as to give him a fair and equitable rate. The rent cannot exceed the old rent with such portion of the increase added to it as will render it fair and equitable under the altered circumstances.

III. If the former value of the produce was sufficient to cover all the costs of production, including fair profits as well as reasonable wages, the three rupees of ascertained increase in the value of that produce, per beegah, is in excess of the costs of production, assuming the cost of production to remain the same. In determining whether the whole of that three rupees, or any and what portion of it, is to be added to the rent, the Judge must be guided by all the circumstances of the case.

IV. In the absence of proof to the contrary, he may take the old rent as a fair and equitable rent, with reference to the former value of the produce. He must take into consideration the circumstances under which the value of the produce has increased, and whether those circumstances are likely to continue, and whether the value of the produce is likely to keep up to the present average in the ensuing year.

V. He must also consider whether the costs of production, including fair and reasonable wages of labour, and the ordinary rate of profits derived from agriculture in the neighbourhood, have increased, and he must make a fair allowance on that account. We cannot lay down any better rule for his guidance than that which we have quoted from *Mr. Malthus*.

To this judgment Sir Barnes Peacock adhered.

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4. The decision of the other fourteen Judges, as stated by Mr. Trevor, in whose rule of proportion the other thirteen Judges concurred, was as follows :—

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IDEAS IN THE
QUESTION
BEFORE THE
COURT.

Para. 5.

To the questions which have been put to the Court by the Division Bench, I would reply—

I. That the terms “ fair and equitable,” when applied to tenants with a right of occupancy, are to be construed as equivalent to the varying expressions (a) *pergunnah* rates, (b) rates paid for similar lands in the adjacent places, and (c) rates fixed by the law and usage of the country; all which expressions indicate that portion of the gross produce, calculated in money, to which the *zemindar* is entitled under the custom of the country.

II. That as the Legislature directs that, in cases of dispute, the existing rent shall be considered fair and equitable until the contrary be shown, that rent is to be presumed (in all cases in which the presumption is not, by the nature and express terms of the written contract, rebutted) to be the customary rate included in the terms.

III. That in all cases in which the above presumption arises, and in which an adjustment of rent is requisite in consequence of a rise in the value of the produce, caused simply by a rise of price, and by causes independent of both *zemindar* and *ryot*, the method of proportion should be adopted in such adjustment: in other words, the old rent should bear to the existing rent the same proportion as the former value of the produce of the soil, calculated on an average of three or four years' rent before the date of the alleged rise in value, bears to its present value.

IV. That in all cases in which the above presumption is rebutted by the nature and express terms of the old written contract, the re-adjustment should be formed on exactly the same principle as that on which the original written contract, which is sought to be superseded, was based.

V. And that in cases in which it appears, from the express terms of the previous contract not still in force, that the rents made payable by the tenant were below the ordinary rate paid for similar land in the places adjacent, in consequence of a covenant entered into by the *ryot* to cultivate indigo or other crops, the old rate must be corrected, so as to represent the ordinary rent current at the period of the contract before it can be admitted to form a term in the calculation to be made according to the method of proportion above alluded to.

5. A confusion of ideas in the second question of the Division Bench (paragraph I, section 2) passed unnoticed by the fourteen Judges, *viz.*, in the inquiry as to what rules of enhancement should be followed, “ if the customary rate of the neighbourhood has not been adjusted with reference to the increased value of the produce.” The hypothesis implied that

APP. XX. the zemindar makes the custom, or manipulates the established pergunnah rate (Appendix XVI, paragraph 26): it assumed that the authors of the permanent settlement, when they designed the same permanency and security in the enjoyment of the fruits of his industry, for the ryot as for the zemindar, contemplated an increase of the ryot's rent from a rise of prices in the same regulation by which they exempted the zemindar's assessment from augmentation from such cause, prohibited fresh *abwabs*, and laid down no rule whatever for enhancement of ryot's rents; the very assumption in the hypothesis, that the customary rate in the adjacent village had not been raised on account of a rise of prices, was contradictory of any assumption that it could legitimately have been raised from such cause, before Act X of 1859.

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IDEAS IN THE
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COURT

Para. 5, contd.

A further error
in favour of
zemindars
assumed by the
fifteen Judges.

6. The Chief Justice and the other fourteen Judges agreed (para. 3, IV, and para. 4, II) that in a suit under Act X of 1859, for enhancement of rent on account of a rise of prices, the old rent must be assumed as the customary rent at the period before that rise began. Thus they assumed in favour of the zemindar that, notwithstanding all the oppression practised by zemindars from 1793 to 1859 (Appendix XI), the rent paid by ryots towards the close of that period was the proper rent. The Judges thus stereotyped the wrong that had been done under *Huftum* and *Punjum*; just as Lord Cornwallis stereotyped all the illegal cesses down to 1790, by directing their consolidation with the ancient pergunnah rate; but whereas Lord Cornwallis recognised existent illegal cesses only that he might prohibit fresh *abwabs* (*i. e.*, enhancement of ryots' rent), the fifteen Judges consoled zemindars for the loss of *Huftum* and *Punjum* by allowing them, not only to perpetuate as proper rents rent-rolls which had been swollen by oppression, but (keeping those ill-gotten gains as a starting-point or basis) to begin a fresh series of enhancements under the ill-conceived benevolence of Act X of 1859. If rents from 1793 to 1859 were swollen by oppression (Appendix XI), then (1) the rise of prices was only compensating ryots for Government's past failures to protect them; (2) additions to those swollen rents, as if to a proper rent, of the full benefit from a rise of prices, only vitiated the application of the fifteen Judges' reasoning, even had their logic been faultless. It is not surprising that Mr. Elphinstone Jackson was able to state, in his minute on Act X of 1859, that the landlords could not

recover the rent which had been ascertained and decreed in App. XX. accordance with the rule of Sir Barnes Peacock—

“because they dare not execute their decrees and dispossess the tenants, being fully aware that they will obtain no new tenants to take the place of the evicted tenants at the rates decreed. * * It was a well known fact, generally talked about in the Nuddea district, that certain landholders were anxious that Mr. Hills should obtain his decrees at the higher rate of rent, because the result would be that the ryot would desert his lands and migrate to their lands, where they would get better terms. They were, however, disappointed in this anticipation, but only because Mr. Hills did not execute his decrees, and did not force his ryots to pay rents in accordance with them.”

—
 GROUNDS OF
 SIR BARNES
 PEACOCK'S
 JUDGMENT.

Para. 8.

7. There was another error in the wonderful unanimity of the fifteen Judges. Admitting (and it is a large admission) that the rents current when Act X of 1859 was passed were proper rents, according to the custom and law which that Act terminated, those rents should have been regarded then as proper rents for the scale of prices which obtained in 1859. Nowhere in the law, down to Act X of 1859, was it ever declared that zemindars in permanently settled Bengal were entitled to raise the established customary pergunnah rates on account of a rise of prices (Appendix XVI, paras. 16 and 24 to 27); that declaration was for the first time made in Act X by a few gentlemen, very well pleased, like Lord Cornwallis, with their own benevolence, who borrowed their inspiration of a proper rent law for permanently settled Bengal from the temporarily settled North-Western Provinces, just as Lord Cornwallis borrowed his zemindari system for the peasant proprietors of Bengal from the landed aristocracy of England. These gentlemen, through their position in a Legislative Council in which no one was heard on behalf of the many millions of ryots in Bengal, were able to decree that thenceforth ryots' rents should be raised in Bengal on account of a rise of prices; but this revolutionary decree, which destroyed the custom of millions of cultivating proprietors who (collectively) were perhaps as valuable subjects of the State as the legislators themselves, was not of any such superlative excellence as that it should have been honoured with a retrospective operation by a further breach of custom. Only the rise of prices since the passing of Act X of 1859 should have been recognised by the fifteen Judges; but they heeded not this essential point.

Another erroneous assumption in favour of zemindars.

8. The fundamental difference between the fourteen Judges and Sir Barnes Peacock concerned the *status* of the ryot at the date of the permanent settlement; the former held t'

by them from their under-renters and ryots according to the time of reaping and selling the produce, and they shall be liable to be sued for damages for not conforming to this rule.

APP. XX.
—
SIR BARNES
PEACOCK'S
JUDGMENT.
—
Para. 9.

II. Forgetting, in imprudent zeal for the zemindar, what Lord Cornwallis had done in 1793, Sir Barnes Peacock sarcastically added, in reference to the occupancy right created by Act X of 1859—

(a). To raise the *status* of the ryot, and instead of leaving him as an agricultural labourer without capital or property, to convert him into a co-proprietor, with interests equal to or greater than those of the zemindar, would doubtless be very benevolent if one were to do so at his own expense. But for the legislature to do so by sacrificing the rights of the zemindar, would, as it appears to me, so far from being fair and equitable, be an act of the greatest injustice.

To which it might be replied in the same strain—

(b). To convert the zemindar—a mere collector of rents and official administrator of a zemindary—into a proprietor of land, with interests greater than those of the actual proprietors—namely, the resident cultivators in each village—might have been very benevolent had Lord Cornwallis done so at his own expense; but for his Lordship to have created a few hundreds of great zemindars by sacrificing the rights of millions of cultivators, was an act of unparelled confiscation and of the greatest injustice. Whence we infer that Lord Cornwallis, by declaring that zemindars were the proprietors of the soil, gave them a limited property in that only which he had the power of giving away, *viz.*, in the State's share in the produce of the soil, which the regulations of the decennial settlement restricted to the established *pergunnah* rates of that day.

9. The statement that ryots were reduced by the zemindary settlement to be mere tenants-at-will, is absurdly inconsistent with the Regulations of 1793, as shown in paragraph 8, section I, and it is contradicted by the zemindars' own estimate of the ryot's *status*; for, had the zemindars regarded the ryots as tenants-at-will, they would have abstained from the enormities they practised under the *Huftum* and *Punjum* Regulations. Sir Barnes Peacock supported his dictum by the following argument:—

I. That the zemindars were, in 1793, declared to be the proprietors of the lands.

Not so (see Appendix XVI, paras. 36 to 41, and para. 46, section I.) The authors of the Regulations of 1793 were careful to define that they used the term “proprietors

APP. XX. of the land" in the limited technical sense of payers of the land revenue.

SIR BARNES
PEACOCK'S
JUDGMENT.

Para. 9, contd.

II. That from 1793 to 1812 zemindars were prevented from granting pottahs or leases to ryots for terms exceeding ten years; and consequently could not, during that period, have created ryots with hereditary rights of property in the soil.

The ryot's title was independent of the zemindar's; it was not derived from the pottah; it had existed as a more ancient title than the zemindar's without a pottah, under a custom of hereditary occupancy of land which had been, *res nullius*, subject to payment of the established pergunnah rate of rent, which custom was not interrupted by the declaration of the zemindar's proprietary right in a part of the State's limited share, outside the ryot's share, in the produce of the soil. The pottah was prescribed merely as a record of the permanent rent that the ryot was to pay under a permanent settlement which was designed to give the same security of permanency to the ryot as to the zemindar. It did not interrupt the custom under which hereditary occupancy rights grew up without a pottah, insomuch that in 1859 the greater part of the land in Bengal was cultivated without pottahs. The period of the pottah was restricted in the first instance, in order to prevent the permanent allotment of land at less than the pergunnah rate, and it was restricted to ten years in order to facilitate the letting of waste land for such term on a progressive rent rising to the pergunnah rate. As the regulation entitled the ryot to demand renewal of the pottah at the pergunnah rate, it did not terminate the custom of occupancy right at that rate (see Appendix XVI, paras. 42, 43, and 46, Section V).

III. That after Regulation V of 1812, zemindars were entitled to grant leases to all new ryots, and to all ryots who were not entitled to demand a renewal of their leases, such as khodkasht ryots, *at any rent*, and for any term that might be specifically agreed upon between them; that such leases, whether in perpetuity or for any term, *were binding upon the zemindars and their heirs or assigns*; and that the Courts were to give effect to the definite clauses of the engagements, and to enforce payment of the sums specifically agreed upon.

The words in italics show that the rents spoken of were such as zemindars might be inclined to disavow, except under compulsion of law; that is, they were rents below the customary rates (see Appendix XVII, para. 22, and also paras. 17 to 19, which latter paragraphs show that the leases—(not pottahs, as supposed by Sir Barnes Peacock—) which Regulation XVIII of 1812 empowered zemindars to grant at

any rent that pleased them, referred to leases to middlemen between the zemindar and ryot. APP. XX.

SIR BARNES
PEACOCK'S
JUDGMENT.

Para. 9, contd.

IV. (a). 'That if the ryot's original holding commenced after the permanent settlement (and if it commenced before, it was for him to prove it, either by positive or presumptive evidence), *he was entitled to have effect given to any definite engagement between him and the land-owner, either as to the duration of the term—if any was specifically granted to him—or as to the amount of rent to be paid, or the rates at which it was to be assessed.*

(b). But that if he failed to prove that any such engagement was entered into, or that the term for which he was to hold was ever fixed or defined, or that any stipulation was made as to the rate of rent at which he was to hold, he need be considered to have entered and held as a tenant for one year only, and to have continued to hold on with the consent of the land-owner from year to year, or, according to the language more generally used in this country, as a tenant-at-will; and that—

(c). But for Act X of 1859, he would have been liable to have his tenancy determined by the land-owner, and to be turned out of possession at the end of any agricultural year. It was stated (in the former judgment of Sir Barnes Peacock) that it was unnecessary to determine whether, according to the law of this country, any notice to Government would have been necessary or not. If by custom or usage a notice to Government was necessary, the ryot would of course be entitled to it before his holding could be determined.

In the passage in italics in extract (a), Sir Barnes Peacock misconceived the facts. The established pergunnah rate was not a matter of contract or engagement between zemindar and ryot; the resident cultivator had, for merely his own security, the option of having the rate recorded in a pottah; but his obligation to continue occupying on the pergunnah rate was not vitiated by his omitting to demand a pottah, the regulations precluding the zemindar from taking more than the pergunnah rate from any one with or without a pottah. Hence the statement in extract (b) was without authority; it was merely Sir Barnes Peacock's inference from the declaration that the proprietary right in the soil is vested in the zemindar; but, as already pointed out, the zemindar's proprietary right was only in the alienated portion of the Government's limited share of the produce of the soil, and that limited right did not trench on the rights and the occupancy holding of the ryot (para. 9, section II). It has also been shown that the curious view, that all who did not hold on pottahs, or under prescription dating from before the permanent settlement, held from year to year at a rent purely discretionary with the zemindar, was contradicted by

APP. XX. I.—MR. JUSTICE TREVOR.

CAPITAL ERROR
OF THE FOUR-
TEEN JUDGES.

Mr. Trevor.

Para. II, contd.

(a). The Government, moreover, has asserted in the preamble of the Regulations XIX and XLIV of 1793 its right to a share of the produce of every beegah in Bengal, assessed and unassessed, unless held lakheraj under a valid grant, or, in other words, unless Government has transferred its right to such share to individuals for a term or in perpetuity, and it has limited its demand in perpetuity over all assessed estates to the sum that, under the settlement, was assessed upon them, leaving *the zemindar to appropriate to his own use the difference between the value of the proportion of the annual produce of every beegah of land which formed the unalterable due of Government according to the ancient and established usage of the country and the sum payable to the public.*

Mr. Trevor overlooked a material phrase, in both Regulations XIX and XLIV, by which the statement of the Government's right was qualified, *viz.*, "a certain proportion of the annual produce of every beegah of land (*demandable in money or in kind, according to local custom*). Where the demand was fixed in money, according to local custom, "the *unalterable due of Government*" (thus fixed in money according to local custom) perforce ceased to represent a fixed proportion of the produce, when once prices rose after that money rent had been fixed, and when it necessarily remained fixed, according to custom, as the "unalterable due of Government." * * *

(b). When, then, the term *pergunnah* rate occurs in the Regulations of 1793-94 and 1799 in connection with *khoodkasht* ryots, the question arises, is it confined to *the particular portion* of the produce of the land to which, by the custom of the *pergunnah*, the demand of the *zemindar* is limited, or does it include also the *abwab* recognized by Regulation VIII of 1793, which has become consolidated with it. * * * I have no hesitation in holding that it must be considered to mean the *assul* or original rate, the rate of *Toorun Mull*, together with the *abwab* which had been subsequently levied from the tenants and recognised by the settlement. It is true that these two quantities joined together did not probably exactly represent that share of the produce calculated in money which, under a pure system of customary rents, would have been developed; but judging from the increased wealth of the country, which had, from commerce and the influx of the precious metals, resulted between the time of *Toorun Mull* and the decennial settlement, the assessment which had been increased in one form (of percentages on the original *assul*) did not probably differ widely from what it would have been had the other and natural mode of calculating the increase been adopted.

Mr. Trevor omitted to verify his facts by a reference to the *Ayecn Akbari*; had he done so, he would have seen that the customary money rent, which prevailed from before the

decennial settlement throughout Bengal, did not, even when originally fixed, represent a fixed proportion of the produce of each beegah (see *post*, para. 12).

APP. XX.

CAPITAL ERROR
OF THE FOUR-
TEEN JUDGES.

Mr. Trevor.

Para, 11, contd.

(c). To suppose that a pergunnah or local rate of rent could be permanently fixed in amount, *when the circumstances of the country were improving*, is to suppose an impossible state of things. The proportion of the produce calculated in money payable to the zemindar, represented by the pergunnah rate, remains the same, *but it will be represented, under the circumstances supposed, by an increased quantity of the precious metals.*

Mr. Trevor's idea of strangeness was strange. Lord Cornwallis distinctly foresaw a rise of prices, yet he fixed the zemindar's assessment for ever; and in enumerating the sources from which the zemindars might increase their rents, he mentioned the *substitution* of more valuable for cheaper kinds of produce, but omitted mention of increased money rents from a rise of prices of the old kinds of produce. Where was the strangeness or the impossibility of requiring that as the zemindar's total assessment would not be raised on account of a rise of prices, so the ryots' money rents, which made up that total assessment would also not be increased? In accordance with this view, the Regulations of 1793 did guard against enhancement by explicitly stating that the amount of customary money-rent to be entered in the pottahs *then to be immediately granted by the zemindar*, would be the sole amount recoverable thereafter by the zemindar, who was expressly prohibited from increasing it by fresh *abwabs*,—*i. e.*, by recourse to the only old ways in which rent in excess of the original *assul* used to be obtained on account of a rise of prices. There is no warrant in the Regulations of 1793 for the passages italicised in the foregoing extract (c).

II.—MR. JUSTICE MACPHERSON.

Rents prior to the settlement were fixed according to the produce of the land, so much of each beegah going to the Government as landlord, and so much to the ryot. *The same principle prevailed after the settlement*, save that the position of the zemindar, as landholder, between the Government and the actual cultivator, was distinctly recognised, and he was declared to be the proprietor of the land in a certain restricted sense. The rents were from time to time adjusted, and there was a pergunnah rate or customary rate of the neighbourhood (*based on the original rule as to dividing the produce proportionately, and from time to time re-adjusted*) to refer to in case of dispute, and according to these rates disputes were settled.

APP. XX. There is no authority in the Regulations of 1793 for the passages in italics; the Government of that day, and of following years, could not have hazarded the assertion in those passages, the Collectors before and after the decennial settlement having been restrained from making enquiries respecting the actual produce of zemindaries, rents, &c.

CAPITAL ERROR
OF THE FOUR-
TEEN JUDGLS.

Mr. Macpherson.

Para. 11, contd.

III.—MR. JUSTICE CAMPBELL.

(After desultory remarks,—after quoting Regulation IV of 1794, respecting renewal of pottahs at not more than the “established rates of the pergunnah for lands of the same quality and description,”—and after quoting from Lord Cornwallis’ minute, that “the rents of an estate can only be raised by inducing the ryots to cultivate the more valuable articles of produce, and to clear the extensive tracts of waste lands”) Mr. Justice Campbell observed—

Looking to the expressions regarding the expiry and renewal of pottahs and the advantage to be derived from more valuable articles of produce, I *imagine* that the framers of the regulations *very probably* contemplated periodical *re-adjustments of rates* between zemindars and ryots *with reference to the value of produce*, in the same way as was originally contemplated in Akbar’s settlements.

There is no warrant in the Regulations of 1793 for the passages in italics. The citation from Lord Cornwallis’ minute of the only two ways in which a zemindar could increase his rents, does *not* include an increase of rent from a rise of prices of the customary articles of produce.

IV.—MR. JUSTICE SETON-KARR.

But the theory of the old rent as the basis (for it is not denied that there must be some existing basis on which to decree an enhancement), *plus* the increased value of the produce as the superstructure, cannot be supported by any such reasoning. If we still keep the old rent, and add to it, we are dealing with what was notoriously fixed by the ancient custom of the country, that is, with cases in which landlord and tenant came to an understanding that *they were to share in the profits of the soil* without any thought of competition or rack-rent. * * We thus commence with a customary rent; and it seems to me, therefore, that enhancement ought to be decreed on somewhat the same principles as those by which the rent was originally fixed—*viz.*, by custom—unless the law has laid down some other principle as our guide. * * That a *reasonable share of the increase is to fall* to the zemindar on account of his increased expenses and his unquestioned position and rights, is admitted, so as to make the division fair and equitable; but it must be so to

both parties. And this requisition will be hardly satisfied by deducting in the ryot's favour the mere increase of the cost of production. In many cases this may be much less than the increase in the value of the produce. And in all cases it will not amount to a recognition of the rights and position of the ryot: * *

Concurred, also, in the judgments of Mr. Justice Trevor as well as Mr. Campbell.

V.—MR. JUSTICE MORGAN.

Before the permanent settlement, and from a time long previous to our rule, the state of property in land here seems to me to have been a kind of joint ownership between the Government and the cultivators. The Government was entitled to a portion of the produce, and the cultivator was entitled to the rest. The share of each was ascertained, and the right of the cultivator to hold his land so long as he paid his assessment to the Government was never questioned. It is true that the State did not limit itself to the share of the produce set apart for it. It was the judge of its own wants, and had the power to exact at will from the cultivator; but, in fact, it so far recognised and respected the *established mode of division*, that its increased demands did not take the shape of an increase in the cultivator's rent. The "*assul jumma*," or original rent, remained unchanged. Of the many assessments which burthened the ryots' lands, this one invariably *took the lead*, and had the semblance at least of *governing the mode by which the others were determined*.

VI.—MR. JUSTICE NORMAN.

At the time of the decennial settlement it was recognised that, by the ancient usage of the country, the ruling power was entitled to a certain proportion of the produce of every beegah of land (see Preamble, Regulation XIX of 1793). Of this public demand, which was then the sole rent demandable from the ryots, ten-elevenths were considered as the right of the public, and the remainder the share of the zemindar (see Preamble, Regulation I of 1793). Thus, the original theory of rent in this country appears to have been that it was a right to a certain proportion of the gross produce. The Regulations of 1793, which have been already referred to at great length, while formally declaring the property in the soil to be in the zemindars, make provision for the protection of the ryots in their holdings, and for regulating the amount of rent to which they were to be subject.

12. In Bengal, money rents appear to have prevailed from the time of Akbar. The Emperor tried but failed to collect rent in kind throughout his empire (Appendix V, para. 4, III, k. 2); he then substituted a fixed money rent. In part III of the *Ayeen Akbari* the following passages occur:—

OF THE TEN YEARS' SETTLEMENT.

I. From the commencement of the immortal reign, persons of integrity and experience have been annually employed in preparing the current

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Part. 12.

XX. prices for His Majesty's information, and by which the rates of collection were determined; but this mode was attended with great difficulties.

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contd.

II. When Khajeh Abdul Majid Asof Khan was raised to the vizaret, in the fourth year of the reign, the jumma of the lands was only computed, and he increased the tunkhas just as he thought fit. As at that time the empire was of but small extent, the exigencies of the servants of the crown were accumulating daily; and the tunkhas were levied partially, according to the particular views of corrupt and self-interested people.

III. But when this great office was entrusted to the joint management of Rajah Tudermull and Mozeffer Khan, in the fifteenth year of the reign, they appointed ten canoongoes to collect the accounts of the provincial canoongoes, and which were brought to the royal exchequer. Then, having taken from the canoongoes the tukseem mulk, or divisions of the empire, they estimated the produce of the lands, and formed a new jumma. This settlement is less than the former one; however, there hitherto had been a wide difference between the settlement and the receipts.

IV. When, through His Majesty's prudent management, the bounds of the empire were greatly enlarged, it was found very difficult to procure the current prices every year from all parts of the kingdom; and the delays that this occasioned in making the settlements, were productive of many inconveniences. Sometimes the husbandmen would cry out against the exorbitancy of the demands that were made upon them; and, on the other side, those who had tunkhas to collect would complain of balances. His Majesty, in order to remedy these evils effectually, directed that a settlement should be concluded for ten years; by which resolution, giving ease to the people, he procured for himself their daily blessings.

V. For the above purpose, having formed an aggregate of the rates of collection from the commencement of the fifteenth year of the reign to the twenty-fourth, inclusive, they took a tenth part of that total as the annual rate for ten years to come. From the twentieth to the twenty-fourth year, the collections were made upon grounds of certainty; but the five former ones were taken from the representations of persons of integrity; and, moreover, during that period the harvests were uncommonly plentiful, as may be seen in the tables of the nineteenth year's rates.

13. It appears from this account that Toodur Mull's settlement was based, like the permanent settlement, on the actual collections from each province during ten years (Appendix V, para. 4, III $\frac{1}{2}$). The yearly average, struck on the total for the ten years, for each province, was the amount which the soubahdar of the province had to send to the royal exchequer. The account stops at this point; but we know from other sources that the amount allotted to the province was distributed to each division, district, zemindary, and village

in it, according to the corresponding averages for the ten years which made up the total average for the province. The yearly average obtained for the village was, in like manner, distributed among the holdings of the ryots in it; and the average amount for each holding became the *assul jumma*, which, though imposed at the outset for ten years, was renewed as the permanent assessment. Sir John Shore observed—

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—
AKBAR'S
SETTLEMENT
—
Para. 14

Tory Mull is supposed to have formed his settlement of Bengal, called the *Tumar Jumma*, by collecting, through the medium of the canoongoes and other inferior officers, the accounts of the rents paid by the ryots, which served as the basis of it. The constituent parts of the assessment were called *Tukseem*, and comprehended not only the quota of the greater territorial divisions, but of the villages, and, as it is generally believed, of the individual ryots.

14. This view is confirmed by the account of the rent of a ryot's holding which Mr. Grant, Serishtadar of Bengal, printed as an example of such accounts in his Analysis of the Finances of Bengal (see the Fifth Report). In it the *assul ryoty jumma* is stated in one sum for the total beegahs of the holding, and the several *abwabs* imposed in subsequent centuries are then detailed. From all this we gather that—

I. Akbar's final settlement was on the basis of a money rent, that is to say, it was struck on the yearly average money amount of the actual collections during ten years, by such procedure and on such local returns as admitted of a corresponding allotment of the assessment to each holding of the millions of ryots whose total payments formed the provincial totals of the local returns.

II. Where the custom prevailed of rent in kind at a fixed proportion of the produce, this assessment of Toodur Mull did not interfere with the custom; his money allotment to each village remained a fixed amount; but it was made up, yearly, within the village, by numerous proprietors—members of the village communities—in accordance with their custom of rent in kind, commuted at the market price of the year. These yearly adjustments threw responsibility and work on the representative men, or headmen of villages, who developed in Behar into talukdars, and in time were partly mistaken in the North-Western Provinces for zemindars.

III. Where the custom of rents in money prevailed, as in Bengal, Toodur Mull's settlement confirmed the custom, and stereotyped the rates afforded by his *assul jumma* on each ryot's holding, till they crystallised as the ancient established rates of the *pergunnah*. The *abwabs* imposed by later

APP. XX. subahdars did not affect these rates, because they were levied as percentages on the original or *assul jumma*; neither did the periodical revisions of the total assessment on each zemindary affect the established pergunnah rates for the ryots; for, as already explained (Appendix XVI, para. 5, section II), the object of those revisions was simply to tax the zemindars for lands reclaimed from waste since the last assessment, without disturbing the ancient established pergunnah rates for the ryots.

AKBAR'S SETTLEMENT.

Para. 14, contd

IV. It is obvious that Toodur Mull's settlement for Bengal, where fixed money rents prevailed, required from the ryots, not a fixed proportion of the produce—whereof the amount varied with the season, and its amount value varied further with the market prices of the year—but a fixed money amount, which was free from the risks of season and of fluctuating prices.

V. Successive subahdars of later generations did indeed impose *abwabs* by which, for themselves partly and for the State, they claimed an increase of rent on account of a rise of prices; but those cesses were kept apart from the established pergunnah rates, which were unaffected by a rise of prices.

The Permanent Settlement was modelled on Akbar's

VI. The authors of the permanent settlement eschewed the practice of these later subahdars and followed the example of Akbar. Like him, they based their assessment on actual collections, introduced it in the first instance for ten years, and then declared it permanent. But not having Akbar's advantage of a perfect organisation of village accountants, independent of the farmers of revenue, and of complete village accounts, they were not able to ensure, like him, the allotment in detail to each ryot's holding of its share of the total assessment fixed for the zemindary.

VII. In the spirit of Akbar's settlement, the authors of the permanent settlement directed, in Regulation VIII of 1793, that the existing cesses should be consolidated with the established pergunnah rate in one sum, which should thereafter form, for each ryot, the entire amount demandable from him, irrespective of any future rise of prices, for (eschewing the practice of the later subahdars) they in the same Regulation prohibited the levy of fresh *abwabs*, that is, prohibited recourse to the only way in which ryots' rents had been raised in the past on account of a rise of prices. The prohibition was the obvious complement of the arrangement by which the assessment of the zemindars was declared to be fixed for ever.

VIII. Hence, in Bengal, where money rents prevailed, the specific amount of money rent which the zemindar was required in 1793 to enter in the ryot's pottah as the sole amount thereafter recoverable from the latter, was not liable to be increased on account of a rise of prices, on the basis of any imaginary fixed proportion of the produce of the soil, such as had not regulated the Bengal ryot's rent for centuries before the decennial settlement.

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A PERMANENT
SETTLEMENT
FOR THE RYOT
WAS INVOLVED
AND IMPLIED IN
THE REGULA-
TIONS OF 1793.

Para. 15.

15. Reverting to the extracts in para. 11, it appears that throughout the extracts it is assumed that the Regulations of 1793 fixed permanently the *proportion* of the produce of the soil which appertained to the ryot and to the State respectively, and of which the State's share was paid by the ryot to the zemindar. The testimony in this assumption that the Regulations of 1793 fixed *permanently* the demand on the ryot, is correct; but the assumption that for Bengal the permanency so fixed was that of the proportion of produce, and not of the money amount recoverable from the ryot, was wrong, for the following reasons:—

A permanent
settlement for
the ryot was
involved and
implied in the
Regulations of
1793.

I. Where a fixed proportion of the year's produce is taken as rent at the current price, the amount so taken varies yearly with the quantity of produce and with the market price; that is, the risk of bad seasons and of low prices is shared by the zemindar. Where, however, rent is fixed in a money amount which does not vary from year to year, the character of the rent is changed; it ceases to be a fixed proportion of the produce of each season, and, in course of time, as prices alter, it represents less and less the old proportion of the yearly produce in days when the rent was taken in kind and was commuted at the current price of the year.

II. This had been the case in Bengal for some generations before 1790, so that the fixed money rents existing in that province at the date of the decennial settlement had no relation to any fixed proportion of the produce, and they were not resolvable into any such fixed proportion by any manner of means.

III. Accordingly, where the Regulations of 1793 spoke of the ryot's rent as being leviable, respectively, in kind (as in Behar) and in money (as in Bengal), they spoke of things which were not equivalents, and used terms which were not mutually convertible; and when they enacted that the amount payable in money by the ryot should be specifically entered in his pottah, and that thereafter the pottah should be the limit of the demand upon him, they precluded any

. XX. further enhancement of the rent, especially as the levy of fresh *abwabs* was prohibited.

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PERMANENT
MENT FOR
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ATIONS OF

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15, contd.

IV. The ancient law of the country, by which the State was entitled to a certain proportion of the annual produce of every beegah of land (demandable in money or in kind, according to local custom), was indeed quoted in Regulations XIX and XLIV of 1793; but so also did Regulation II of 1793, section I, set forth the proportions of ten-elevenths and one-eleventh, in which the State's share of the produce, as received in aggregate from the ryot, was divided between the Government and the zemindar. If the zemindar was exempt from an increase of his assessment on account of a rise of prices, because the amount thereof, though purporting to be a fixed proportion of the produce, was stated in money, the ryot in Bengal, who did *not* give a fixed proportion of his produce as rent, but whose ancestors, for generations, had paid a fixed money rent, was similarly, nay, more markedly, exempt from a like enhancement on account of a rise of prices, by the direction to his zemindar in 1793 to enter in the ryot's *pot-tah* the specific money amount payable thereafter by him.

V. Had the Government enforced an observance of the law, it would have been the most natural thing in the world that the established customary *pergunnah* rate of 1793 should be perpetuated without change. In those days, and for the many generations during which the *pergunnah* rates had acquired the prescription or sanctity of ancient custom, there was a competition among zemindars for ryots; the *custom* of the *pergunnah* rate was necessarily imposed, therefore, by the ryots, whose name was legion—not by the zemindars, who were few. The latter could not create the custom; the former, perforce, would not destroy it. The resident cultivators had a right to take up land in their own village at the customary rate, and non-resident cultivators were attracted to the village only by less than the customary rate. Where, thus, there was no room for enhancement of the *pergunnah* rate, unless by violence of the zemindar, it was natural that the Regulations of 1793 should treat the *pergunnah* rate as permanent.

VI. That in permanently settling the zemindar's rent, the ryot's rent should also be permanently fixed, was an idea which would naturally occur to the authors of the permanent settlement, who were familiar with the copyhold tenure in England and its permanent rent, and with the intentions of Warren Hastings and Sir Philip Francis that the ryot's rent should be permanently fixed.

16. Hence, the unquestioning spirit in which the Courts accepted as proper an increase of the established pergunnah rate by the zemindars, is astonishing—

APP. XX.
—
ERRONEOUS
ASSUMPTION
THAT ANCIENT
CUSTOMARY
RATES COULD BE
INCREASED.

I.—MR. JUSTICE TREVOR.

Since the decennial settlement, however, the rates of rent have adjusted themselves to the varying prices of the produce, irrespective of any extraneous demand; and the terms used in Regulation V of 1812 have regard to the varying rates in the different localities, which have resulted solely under the increased activity and industry caused by the comparative security obtained under the permanent settlement.

Para. 16.

II.—MR. JUSTICE MACPHERSON.

It further appears from the Regulations of 1812 that the adjustment of the pergunnah rates was much neglected—probably owing to no great change having for many years taken place in the amount or value of produce—and that there were no recently adjusted rates to refer to, and no customary rates to form any general guide throughout the country.

The Regulations of 1793 required the zemindar to collect, ever after, according to the rates of that day, which were to be entered in a pottah for each ryot, in a specific amount of money. They spoke of these rates as established customary rates, and they prohibited zemindars from levying fresh *abwabs*; yet Mr. Justice Macpherson spoke of the zemindar's neglect in not manipulating, to his own views of enhancement, the ancient pergunnah rates which the custom of ryots had established,—as if the manipulation of custom by zemindars was not a contradiction in terms, and a euphemism for the breach of the Government's solemn engagement with the ryot, who, in all else, was so greatly injured by the Regulations of 1793.

III.—MR. JUSTICE CAMPBELL noticed that in the Regulations of 1793 no provision was made for enhancing ryots' rents on account of a rise of prices, for the obvious reason (which Mr. Campbell missed) that any such enhancement was not contemplated. He proceeded—

(a). When the customary rates were enhanced, it must have been done without the least assistance from the Law (which said nothing about their enhancement) or the Courts of Judicature. In fact, however, the rates have generally been enhanced. The zemindars had great power over their ryots; the interference of the Law was but partial; the zemindars could do much without Law; and the reliance of the ryots was much more on custom than on Law.

If the zemindar, instead of raising the customary pergunnah rate, had levied *abwabs*, leaving the customary rate

APP. XX. intact, and if he had sued in the Civil Court for *abwabs*, Sir George Campbell would have dismissed the plaint; but the zemindar having defied the law and raised the pergunnah rate, Sir George Campbell acquiesced in his act as natural and proper, because the powerful zemindar "could do much without law." Though Sir George Campbell wrote "law" with a big L, yet evidently he had more respect for the zemindar's power than for law. He proceeded—

ERRONEOUS
ASSUMPTION
THAT ANCIENT
CUSTOMARY
RATES COULD BE
INCREASED.

Para. 16, contd.

(b). Moreover, in this matter the zemindars had a strong equity on their side. Although no rule of enhancement was laid down by the Law, *it seemed hard* that, as the relative value of produce and money altered, as produce became relatively more valuable and money relatively less valuable, the zemindar should continue to receive, *as representing his share of the produce*, a sum of money actually representing a smaller purchasing power, a smaller quantity of grain, and a smaller proportion of the produce. The fact seems to be that *the contingency of a change in the relative value was omitted to be provided for*.

The omission was intentional. The zemindars were amply compensated in the prospective rent from waste lands for the denial to them of power to raise the rates of rent as they existed in 1793. Lord Cornwallis distinctly contemplated a rise of prices, and yet fixed the zemindar's rent for ever; and on precisely the same grounds, he omitted to legalise enhancement of the ryots' rents on occasion of a rise of prices. The fallacy in the second italicised passage in extract (b)—*viz.*, that in Bengal, with its fixed money rents, the zemindar was entitled to a fixed share of the produce—has been exposed in a previous paragraph. The first italicised passage in the same extract is remarkable: such was the devil's luck of zemindars, that even Sir George Campbell was misled in their favour by sentiment. Impressed with their power, he thought that they might be indulged in their foible of enhancing rent; touched by their irresistible propensity to enhance rent, he checked the law's propensity to punish them for it, and tolerated *abwabs* as a pardonable way of enhancing rent, though the Regulations of 1793 did prohibit fresh *abwabs*, and did not provide for enhancement of the customary rent as established in 1793; but what the Regulations did or did not do or say, was, perhaps, of less consequence to Sir George Campbell than his own ideas of the fitness of things.

17. It appears from this review of the judgments in the Great Rent Case, that facts relating to the permanency of the pergunnah rate of rent in 1793 were misconceived, even in

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SUMMARY OF
THE ERRORS IN
THE JUDGMENTS
ON THE GREAT
RENT CASE.

Para. 18, contd.

III. All fifteen Judges concurred that, notwithstanding the oppression under *Huflum* and *Punjam*, which, for two generations after 1799, the zemindars practised to enforce their exactions from ryots, the rent paid by ryots towards the close of the period from 1793 to 1858 was the proper rent.

IV. And although the law from 1793 to 1858 nowhere provided for an enhancement of rent on account of a rise of prices, yet the fourteen Judges assumed that the new law of 1859, which did provide for enhancement from this cause, had retrospective operation (para. 7).

V. That is to say, the fourteen Judges did not rule, as they should have done, that only such rise of price as occurred after the passing of Act X of 1859 could be received as ground of enhancement (this much was required from them even in logical agreement with their erroneous assumption in III); they assumed that the full rise of price since the last adjustment of rent, though dating from long prior to 1859, should be regarded in enhancing that rent.

VI. Sir Barnes Peacock, indeed, went farther. He held that previous prices and rents should be disregarded; that ryots, since 1793, had been mere tenants-at-will of the zemindars; and that therefore the ryots' rent should be determined according to the definition of Mr. Malthus. Sir Barnes, however, forgot that "it would surprise land-owners in England if they were to find" that they must adjust their farmers' rents according to Malthus. He reasoned, also, under a delusion that the mass of the ryots—who, in the practice of the zemindars themselves, were recognised as occupancy ryots under a custom more ancient than law—were mere tenants-at-will; and under the influence of these capital errors, he passed in favour of certain landlords decrees which gave them so very much more than any ryot could pay, that the landlords would not enforce their decrees (paras. 8 to 10).

VII. The other fourteen Judges also misconceived facts in assuming—

(a). That the money rent which from long before 1793 had been paid throughout Bengal, expressed a fixed proportion of the produce of the soil as the State's share (para. 11).

(b). That accordingly, as prices rose after 1793, the zemindars were entitled to raise the pergunnah rates of rent commensurately with that rise of prices (para. 15).

Both these assumptions were wrong; for—

(c). Under ancient custom, antecedent to the time of Akbar, the rent paid by ryots throughout Bengal was, a

money rent ; and as 'Foodur Mull's settlement, under Akbar, was based on actual collections in money, that is, on money rents, it did not interrupt that custom (paras. 12 and 13).

(d). A fixed money rent, maintained as such for long, by custom, is the very opposite to a fixed proportion of the produce of the land ; for if, at the outset, the rent was adjusted to any definite proportion of the produce, it even then deviated from the normal share in the produce of each season, by taking a lower average of proportion for several seasons, so as to provide an allowance to the ryot for his risks in bad seasons, and in years of low prices ; and it became progressively less and less than that proportion, according as prices rose in the long period, during which custom may have continued the money rent at the amount at which it was originally fixed (para. 14).

(e). Akbar's assessment remained as the *assul jummah* ; the additional demands on the ryots in Bengal, in later reigns, were levied in the form of *abwabs*, or cesses, at certain percentages on the *assul* which left intact the ancient pergunnah rates. These *abwabs* were partly exactions, partly increases of demand on account of a rise of prices. Paying regard to this latter consideration, Lord Cornwallis's Government directed the consolidation of these existing *abwabs* with the customary pergunnah rates, and the levy, thereafter, of the money amount in which that aggregate was to be stated, as the sole demand recoverable from the ryot.

(f). At the same time, the levy of fresh *abwabs*, or the only form in which under the former usage money rent could be increased on account of a rise of prices, was prohibited ; and in the Regulations of 1793, the Government deliberately abstained from laying down any other rules for enhancing rent ; it having been distinctly recorded in the minutes of Lord Cornwallis and Sir John Shore, and in the orders of the Court of Directors confirming the permanent settlement, that, under that settlement, the ryot was to have the same security of permanency as the zemindar, whose assessment was declared to be not liable to increase on account of a rise of prices.

(g). Accordingly, in Bengal, where money rents had been paid under a custom some centuries old, and where, accordingly, the money rent did not represent any fixed proportion of the produce, there was no room, after the enactments in the Regulations of 1793 (*e* and *f* above), for an increase of rent from a rise of prices, a fixed money rent

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RENT CASE.
Para. 19, contd.

APP. XX. being freed, by its permanency or fixed character, from considerations of any particular scale of prices.

CONCLUSION.

Para. 19, contd.

Conclusion.

19. Thus we find that—

I. Sir Barnes Peacock was wrong in assuming that after 1793 ryots became tenants from year to year, and zemindars became entitled to raise the pergunnah rates of rent at discretion.

II. The fourteen Judges were wrong in assuming that the money rents which, as established pergunnah rates, had been paid throughout Bengal, under a custom of centuries which the permanent settlement did not interrupt, but was designed to preserve, could be legally raised by the zemindars after that settlement.

III. The zemindars did indeed raise those pergunnah rates from 1793 to near 1859; but they did so in defiance of law, by violence, under the power which, for a wholly different purpose, was given them by the *Huftum* and *Punjum* Regulations.

IV. Act X of 1859 was not meant to legalise the wrong done under *Huftum* and *Punjum*, but to prevent high-handed oppression. The legal status of the ryot remained the same as in 1793, *viz.*, the rightful occupancy of the land which he cultivated in his own village, subject to payment of only the pergunnah rate of 1793, plus cesses of that year.

V. Accordingly, all that the ryot was paying in 1859, as rent and cesses in excess of the rent and cesses of 1793, was extortion; and in adjudicating the fair and equitable rate of rent payable by the ryot under Act X of 1859, it behoved the Court to allow an increase of rent for only any rise of prices since 1859; and to allow no increase on this account, except to the extent of any excess of the gross increase from this cause, since 1859, over the amount by which the ryots' payments before the passing of Act X of 1859 may have exceeded the amount which would have been recoverable from him, in Bengal, on the scale of payments in 1793.

VI. Even this much of award would have been a breach of the engagement in 1793, by which the faith of Government was as solemnly pledged to the ryot as to the zemindar; but that breach of engagement is chargeable on the legislature that passed Act X of 1859, which—nearly seventy years after the decennial settlement, and for the first time under law—subjected the ryots' rent to enhancement, from a rise of prices.

APPENDIX XXI.

RENT LEGISLATION SINCE 1859.

1. The examination of the judgments on the Great Rent App. XXI Case has interrupted the regular course of the narrative of the relations between landlord and tenant. The repeal of *Huftum* and *Punjum* by Act X of 1859, the formation of sub-divisions under deputy magistrates, and the attention bestowed from 1859 on the reform of the police (which resulted in a considerable enlargement of the police force throughout Bengal upon improved pay), freed ryots to a great extent from the oppression of brute force—of might over right. Acts X and XI of 1859 promoted, however, a new form of oppression; they opened out fresh sources of litigation, and a year later, a revision of the Stamp Act made litigation costly. If summons to the zemindar's cutcherry and summary distraint of ryot's property, with its plunder as the regular consequence, ceased under Act X of 1859, there was framed for the ryot in a short time, under that law, a fresh burden, perhaps more grievous for him to bear and more crushing to his spirit, since it was the law that exposed him to bear the new burden, *viz.*, heavy law charges in rent suits, —charges which, *1stly*, are greatly disproportionate in each suit to the small amount involved, and of which, *2ndly*, the burden is often increased twelve-fold by the monthly repetition of the suits. The Sudder Court had ingeniously improvised a theory that rent is an ever-recurring cause of action; and zemindars, appreciating the jest, facetiously retailed it monthly, through their amlah, to ryots of a sullen disposition, who, resisting the zemindar's wishes, had to be taught to smile when he spoke to them through his amlah.

2. The ryots, however, learnt their freedom, under Act X of 1859, from the old oppressions, sooner than the zemindars learnt their new power under the same Act. The zemindars complained accordingly, as after the permanent settlement, of difficulty in realising rents, and indigo-planters complained of difficulty in obtaining execution by ryots of their engagements.

THE OPPRESSIONS DISCONTINUED UNDER ACT X OF 1859 HAVE BEEN REPLACED BY EXPENSIVE LITIGATION.

APP. XXI.

GROWTH OF
EXPENSIVE
LITIGATION.

Para. 3.

3. In consequence, Act VI of 1862, of the Bengal Council, was passed for facilitating the recovery of rent. Among its provisions were the following :—

I.—SECTION XIV.

So much of section 71 of Act X of 1859 as directs that no fee for any agent shall be charged as part of the costs of suit in any case under the Act, is hereby repealed. In awarding costs to either party in any suit hereafter to be brought under the said Act or under this Act, it shall be competent for the Collector to award to such party, on account of the fees of any agent or mooktear employed by him, such a sum not exceeding the rate of fee chargeable under the provisions of section VII of Act I of 1846 for pleaders in the Civil Courts, as the Collector may direct.

II.—SECTION II.

In any suit hereafter to be brought for rent under Act X of 1859, if it shall appear to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount due by him, and that he has not, before the institution of the suit, tendered such amount to the plaintiff or his duly authorised agent, or, in case of refusal of the plaintiff or agent to receive the amount tendered, has not deposited such amount with the Collector before the institution of the suit in manner hereinafter mentioned, it shall be lawful for the Court to award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per cent. on the amount of rent decreed, as the Court may think fit. These damages, if awarded, as well as the amount of rent and costs decreed in the suit, shall carry interest at the rate of twelve per cent. per annum from the date of decree until payment thereof, and shall be recoverable from defendant in like manner as sums decreed to be paid by defendants under Act X of 1859 are recoverable.

4. We have seen in Appendix XX, para. 8, *Id.*, that, under Regulation VIII of 1793, section 64, which is still unrepealed, zemindars are restrained from receiving rent from ryots before the reaping of the harvests and sale of the crops. The first turn of the screw was applied when Act X of 1859 enabled zemindars to fix monthly instalments for the rents payable by ryots; the twelve due dates for the twelve instalments afforded pretexts for vexatiously suing the ryot twelve times a year, and subjecting him to costs, which the Stamp Act of 1860 greatly enhanced. Section XIV of B. C. Act VI of 1862 now added to these costs the charge for the zemindar's pleaders. In this matter, *1stly*, unequal measure was dealt out; the ryot having but one suit has to pay 5 per cent. on its amount to his own pleader, and when he loses, other 5 per cent. for the zemindar's pleader, in all 10 per

cent., whereas the zemindar, if he loses, pays his own pleader nothing special for the particular suit, but a monthly or yearly allowance for all his suits, which becomes an infinitesimal percentage on any one suit; *2ndly*, the legislature overlooked that in suits *bonâ fide* for actual arrears of rent the employment of pleaders, instead of being recognised, might well be interdicted, as it was interdicted in Act X of 1859. The change did not elicit any discussion in the Council, but it ought surely to have been seriously challenged; for six years later, it was well observed in the same Council by Mr. Rivers Thompson (27th June 1868): "Suits which referred to the recovery of arrears of rent were generally of a character which, if standing by themselves, might be well cognisable by officers of the smallest experience in the mofussil. They involved no points of difficulty, but in the majority of instances simply depended upon a few questions of fact and a balance of accounts, which required neither judicial experience nor training to decide." Clearly, cases in which the zemindar honestly sues for arrears of merely the old amount of rent are of a kind in respect of which the idea or possibility of his engaging a pleader for their prosecution ought not to be entertained; the cases become complicated only by the zemindar's own act in mixing up questions of enhancement with simple facts of periods for which the old rate of rent is due, and of the amount due. But this—the zemindar's wrong-doing—was recognised as a fair ground for enhancing the cost and charges of a suit to the ryot, and thus increasing the proverbial difficulty or hopelessness of a poor person contending with a rich man in a court of law.

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PROCESS FOR
RECOVERY OF
RENT.

Para. 5.

5. For the other alteration (para. 3, section II), by which Act VI of 1862 added to the ryot's burden, the justification urged was that ryots who refuse to pay their proper rent merely that they might obstruct or embarrass the zemindar, should be amerced in damages. Thus—

Summary
process for
recovery of rent.

I.—MR. E. H. LUSHINGTON (*8th February 1862*).

By the law, landlords were compelled to pay the Government revenue by a certain day, and no excuse was admitted; and if they could not collect their own rent, the case was very hard upon them.

II.—MOULVEE ABDOL LUTEEF (*15th February 1862*).

The Government admitted of no excuse for delay in the payment of its revenue by zemindars; it was but fair that it should afford to the

APP. XXI, latter all proper facilities for collecting *their* rents. The existing law was unequal to the necessities of the case. It was impossible to bring a whole population to Court; the Courts must be multiplied *ad infinitum* before it could be done with any prospect of speedy justice; and if it were possible, so great would be the expense, inconvenience, and delay to the zemindar of collecting rents in this way, that he would find himself a great loser in the end. He could not long go on collecting thus, and his zemindary might be sold by the Collector before he had got execution of his decrees.

SUMMARY
PROCESS FOR
RECOVERY OF
RENT.

Para. 5, contd.

III.—BABOO RAMAPERSAUD ROY (15th February 1862).

(a). At present the Government fixed a day for zemindars to pay their *quota* of the revenue, and if they did not pay on that day, their lands were liable to sale. Why should landlords not have the same facilities afforded them for collecting their rents? He did not mean to say that the same summary process should be left in the hands of the zemindars; but, under proper safeguards, a facility might be afforded to them similar to that enjoyed by the Government. * *

(b). What measure, he asked, would work greater success than the certainty of losing one's tenure if the rent was not paid before the date of the decree? And, after all, this would be simply a partial application of the remedy which had been attended with complete success in the analogous case of Government revenue.

(c). For these reasons he did not think the proposed remedy a complete one; and he thought that, if they were to legislate on the subject, they ought to avoid mere local, class, or special legislation, and to legislate for the whole country under all circumstances that might occur. He would suggest that, after a decree of Court, the zemindar should be at liberty to eject the ryot if he held on an unsaleable tenure, or to sell the tenure if it were saleable. Such legislation would, he had no doubt, give universal satisfaction. * * He would only again repeat that the real remedy which the case required was to make the remedy of the landlords analogous to that possessed by the Government against them.

IV.—SIR CECIL BEADON (15th February 1862).

(a). He, the President, thought that the provision for penal damages was entirely a right one. It was fully a year since he recommended a similar provision to the late Council. Why it was not carried into effect he did not know, for it appeared to him to meet with very general approval. There were certainly objections raised to it by some, of the same character as those which he had heard¹ to-day. Objections were felt to the introduction of penal damages as contrary to ordinary principles; but looking at the position of the zemindar, looking at his liability to forfeit his estate if he failed on a fixed day to pay his quota to the revenue, he (the President) thought that they were bound to give him every facility for realising his rents. They knew that in certain places the zemindar experienced great difficulty in getting in his rents, and they were bound to

¹ Not reported in the proceedings.

APP. XXI. be, then, that the assessment on the Bengal ryot is more grievously burdensome under British rule than it was under Akbar. In other words, the justification of the increasingly burdensome rent laws is that they are needed, not for enabling the zemindar to pay a Government revenue which is the same as in 1793, out of a ryot's rent which is often tenfold the amount in 1793, but for enabling numerous middlemen, who, some years since, were styled curses of the country, to scramble for the unearned increment which to the last pie they would squeeze from the ryot. On the 6th June 1868, in the Bengal Council, the Advocate-General observed—

SUMMARY
PROCESS FOR
RECOVERY OF
RENT.

Para. 8, contd.

It was suggested to him that there were estates in which there were so many successive under-tenures carved out of the estate, that in many cases the under-tenant might not be able to ascertain the names of all the holders between himself and the immediate recorded proprietor of the estate.

9. The Bengal Council passed Act VII of 1868 in enlargement of the Sale Law, Act XI of 1859, and Act VIII of 1869 in continuation of the Rent Law, Act X of 1859; but the first-mentioned Act (VII of 1868) left intact the classes of tenures that were protected by the old law from enhancement of rent by the auction-purchaser, and the second Act, (VIII of 1869) transferred rent suits from the Revenue to the Civil Courts, without making any change in the substantive revenue law: the grounds for enhancing rents, as presented in Act X of 1859, were accordingly retained in Act VIII of 1869.

10. But though the law was not changed, the spirit in which it was applied by the Courts was perhaps changed by the transfer of rent suits to the Civil Courts; as observed by Mr. H. L. Harrison, Collector of Midnapore (30th June 1876)—

Under Act X of 1859, the Revenue Courts, as a rule, granted enhancement easily; and seeing this, zemindars generally allowed rights of occupancy to be acquired readily. The Civil Courts have reversed the situation under Act VIII of 1869 (Bengal Council); but in most cases the occupancy has been acquired, and there is no room for further fighting; at any rate, I know of no estate in this district in which a struggle to acquire or to defeat occupancy rights is going on.

It did not occur to Mr. Harrison that the calm in Midnapore was probably the exhaustion of ryots dead-beaten in the period during which the Revenue Courts readily enhanced rents, and, by changing the rate of rent, destroyed a large class of occupancy rights.

11. The real history of the changes in the relations between landlord and tenant from 1859 to 1875 must be sought in the records of the Civil and Criminal Courts. If the suits, and the criminal prosecutions instituted in each sub-division of a district, were to be classified, *1st*, under each zemindar, *2nd*, against each ryot, and the nature of the suits and offences were ascertained, they would show, as nothing else can show, how, in the brief period of fifteen years from 1857 to 1871, the status of the agricultural classes came to be so completely changed that, whereas in 1857 the mass of the ryots were khodkashts, who were entitled to occupy at ancient established pergunnah rates (Appendix XI 8, paras. 13 to 15), in 1871-72 it was stated by the Bengal Government that the mass of occupancy ryots in that day were the creatures of Act X of 1859 (Appendix XIII, para. 6, section 1 *d*).

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CHANGED RELATIONS BETWEEN LANDLORD AND TENANT.

Para 13.

12. To these creatures a lot like that of the ryots in the Madras and Bombay Presidencies, where their assessment is fixed for thirty years, would have been welcome; but by favour of the law, the zemindars and middlemen reserve the power, or seek the opportunity, of enhancing the ryot's rent every three or five years, or so. Mr. E. G. Glazier, Collector of Rungpore, observed (16th August 1876)—

In the largest estate in this district, where enhancement has been pressed with a vigour and a ruthlessness seen nowhere else, there is a well organised system of making all ryots take short leases of one, three, or four years' duration, and the effect is officially reported by the sub-divisional officer to be that numbers who had occupancy rights have thereby lost them through ignorance of the law, and now the occupancy ryots do not number more than one-tenth of the whole body. In my last Administration Report I referred to a somewhat similar state of things which had occurred in the south of the district.

13. The unsettled feeling kept alive by these frequent enhancements of rent continued unchecked by any alteration of law until 1871. In that year the District Road-cess Act X of 1871 (Bengal Council) was passed. It had no direct connection with the subject of landlord and tenant; but one of the provisions for collecting the road cess has had an important influence upon the enhancement of rents. In explaining the Road-cess Bill, Mr. Schalch observed—

I. Another object was to ensure the correctness of the returns, which was proposed to be done in two ways, *first*, by requiring that no zemindar or tenure-holder should be entitled to sue for more rent than might be entered in his return, these papers being capable of being used

APP. XXI. as evidence against himself. Of course they would be of no value as evidence against the parties who were sued; and if the zemindar puts down more rent than he had to receive, that would be his own loss; he would have to pay a cess upon that amount, while he would not be able to recover. * *

CHANGED RELATIONS BETWEEN LANDLORD AND TENANT.

13, contd.

II. Where there were tenants holding certain rights of proprietorship, or tenants with rights of occupancy, the zemindar would be careful how he falsified the return, because in these cases he would be obliged to have recourse to the law to enforce his claims.

III. But undoubtedly the case was different with the great mass of cultivators, who were mere tenants-at-will; the zemindar there, having power to oust the tenant at the close of the year, would seldom have recourse to the law courts for recovery of rent, and would, therefore, not be deterred from giving false returns by the fear of affording evidence against himself. We allow that there is this difficulty, and we are prepared to face it rather than do away with the key-stone of the structure of the Bill, namely, what we may call voluntary valuation, by which we endeavour, as far as possible, to assess each man on his own valuation, and thereby avoid the necessity of having any separate assessing establishment.

Accordingly, in section VII of the District Road-cess Act, it was enacted—

III. From and after the expiry of three months from the service of any such notice, or any extension of such time under the provisions of the section next preceding, every holder of an estate or tenure, in respect of which such notice shall have been served, shall be precluded from suing or recovering any rent in respect of any land or tenure which shall be proved not to have been included in the return lodged by him, or in respect of which no return shall have been lodged as aforesaid or valuation made by the Collector, and from recovering rent for tenures subsequently created or in excess of the sum mentioned in such return, without proof of the creation of such tenure or enhancement subsequent to such lodgment.

it of 14. On the imposition of the road-cess, some zemindars endeavoured to recover their portions of the cess by an extra impost or cess on the ryots; this attempt the latter resisted: and the steps they took for resisting it taught them that, under the foregoing provisions for the collection of the road-cess, they were exempted from payment of any cess whatever, beyond the amount of rent entered by the zemindars in their returns under the Road-cess Act. On this point the Collector of Tipperah explained (26th July 1876)—

The principal grounds of dissatisfaction between landlords and their tenants have arisen through the refusal of the latter to pay any more cesses. Now, the landlords had for years been accustomed to levy such cesses; and as long as they got them, did not care to enhance the old rates of

rent entered in their books as the rent payable by the tenants. The ryots refusing to pay cesses, the landlords are casting about how to enhance the very low rates of rent entered in their books, which only they can legally get decreed to them, the Courts, of course, putting aside anything of the nature of a cess.

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15. The unsettled feeling on the subject of rent since 1871 is described in the extracts paras. 9 to 13 of Appendix XII. On 24th September 1875, a Bill was introduced into the Bengal Legislative Council to "provide for inquiry into disputes regarding the rent payable by ryots in certain estates, and to prevent agrarian disturbances." Respecting the state of feeling between zemindars and ryots, which led to the Bill, there were the following accounts:—

I.—STATEMENT OF OBJECTS AND REASONS—(*Sir R. Temple's Minute, dated 16th March 1875*).

(a). For some time past there have been indications of renewed uneasiness and uncertainty here and there in some parts of Bengal, more especially Eastern Bengal, in the relations between landlord and tenant, particularly touching the rates of rent. I say renewed, because it will be in the recollection of all who are conversant with these affairs, that there were troubles of this sort in 1873, which showed themselves markedly in the Pubna district.

(b). There are occasionally complaints on the part of ryots and on the part of zemindars in some portions of the districts around Calcutta or in Central Bengal. At the present time, however, such complaints on both sides are more rife and more extensive in Eastern and South-Eastern Bengal. This may be illustrated by the following extracts from the Dacca Commissioner's Annual Report, dated the 12th September 1874:—

"Para. 26. District officers report that there are not wanting indications of very unsatisfactory relations between some landlords and their tenants on the question of rent. The landlords see the ryots profiting largely by the enhanced value of the produce of what they regard as their property, and they desire, not unnaturally, to intercept some portion of this increased return some way or other; the action taken by the authorities against the levy of illegal cesses leads them further to desire to place this demand on the safe footing of higher rents."

The Annual Report of the Commissioner of Chittagong, dated 4th September 1874, contains the following passage:—

"Para. 62. In the Chittagong district, the relations between landlord and tenant are never very cordial; and the Magistrate reports one instance in which the purchasers (Hindoo zemindars and rice-traders) of a large estate, at a sale for arrears of revenue, have been unable to deal with the ryots without the assistance of the Magistrate, to whom the purchasers made application, through the Civil Court, for detailed measurement and record of rights, the ryots refusing to point out their lands, or come to any terms. Of course the new proprietors would enhance, and equally, of course, the ryots are opposed to any such proceeding."

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Para. 15, contd.

(c). Since these reports were written, agrarian troubles actually began to occur during January 1875 in the eastern portion of the Dacca district. A dispute regarding rent broke out between the zemindars and ryots, and threatened to lead to breaches of the peace. * * It is always difficult to forecast the line which an agrarian people may take, or what provocation might be given on either side. But the opinion seems gaining ground among well-informed persons, that if once any considerable trouble of this nature were to break out anywhere, the movement might spread to other places. In some localities the zemindars might get the upper hand, in other places the ryots. In some localities the strength of both parties might be nearly balanced, and might be equal to sustaining a contest for some time. All circumstances of this nature would either be altogether harmful, or else would do more harm than good.

(d). In parts of Eastern Bengal there seems to be a disposition among the ryots to combine in something like leagues and unions. The object of such combinations may be various. If any success were obtained by these means, there is always a chance that ryots might begin to combine in refusing to pay rent, whereon the zemindars might try to collect it by force. The consequences of a combination with this object might be serious in the present state of Bengal. * *

(e). As yet no trouble has actually broken out since 1873; but, as just seen, something of the kind was very nearly breaking out quite recently, and, despite our efforts, may yet break out. And the apprehension of similar occurrences elsewhere in Bengal is, I believe, present to many thoughtful minds.

II.—THE HONOURABLE BABU KRISTODAS PAL (*24th April 1875*).

Honourable Members of this Council were aware that for some years past the feeling between the zemindars and ryots in several districts in Bengal had been far from what was desirable, and what ought to subsist between them; and in some cases this feeling had found expression in overt acts of disturbance. * * Baboo Kristodass Pal had some opportunities of knowing how things were getting on between ryots and zemindars in several districts; and he must say that, unless some measures were taken to promote peace and harmony between them, the tranquillity of the country might be endangered, and the Government called upon to take stronger measures than that now proposed.

In 1789 Lord Cornwallis felt sure that if the Government assessment were fixed for the zemindars for ever, they would cherish and protect the ryots. The Government assessment was the same in 1875 as in 1793; the ryots' rent in 1875 was tenfold that in 1793; yet the cherishing care of ryots by zemindars agitated the Bengal Government with fears of agrarian disturbances.

16. In 1793 there were old-established pergunnah rates, so well known that ryots held lands without pottahs or agreements, and so easily understood and ascertained that disputes

were referred to the Civil Courts. In 1875 Sir Richard Temple wrote, in the Statement of Objects and Reasons—

“that among the disputed cases the most important class will relate to economic and agricultural questions with which Civil Courts are not well fitted to deal. * * Matters pertaining to the profits of cultivation, the value of produce, the customary rents, and the like, will be argued out by opposing counsels; appeals may be laid, and decisions can be enforced only by the formal process of execution. * * The second ground of enhancement is the most difficult of all, as it involves questions whether the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot. These are purely economic and agricultural questions which cannot possibly be argued and discussed and attested in a Court of law with any advantage, or with any definite authority. And yet this is the very ground on which the most serious disputes are likely to arise, and is actually the ground on which the disputes in Eastern Bengal are now arising.”

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Para. 18.

17. It did not occur to Sir Richard Temple that these difficult economic questions have arisen solely from the extension, by Act X of 1859, to ryots in permanently settled Bengal, of irrelevant grounds of enhancement of rents which were mistakenly borrowed from the temporarily settled North-Western Provinces; and that these difficult economic questions were in striking contrast to the simple facts of old-established pergunnah rates with which the authors of the permanent settlement dealt, and on the permanency of which they relied for securing to the ryots the same enjoyment of the fruits of their industry which the fixing of the Government assessment for ever was to secure to the zemindars. The contrast between the simplicity of 1793 and the bewildering perplexity of 1875, which is no nearer a solution in 1879, illustrates how wide has been the departure from that permanent settlement in which the faith of Government was as solemnly pledged to the ryots as to the zemindars.

18. Unconscious of this variation by the zemindars of the conditions of their contract in the permanent settlement, Sir Richard Temple proceeded—

(a). The contest must be upon the second of these grounds of enhancement, namely, that the value of the produce and the productive powers of the land have been increased otherwise than by the agency or at the expense of the ryot. This ground involves general considerations regarding the past and present state of Eastern Bengal: the progress of trade, especially the export trade; the range of prices on the one hand, and on the other hand the expenses of cultivation; the just share of the ryot in the profits of cultivation; the general tendency of rural custom, and the like. It is not easy to imagine matters less suited for discussion in the law courts when the people are becoming angry on both sides.

APP. XXI. Manifestly the proper persons to bring these urgent matters to a just and peaceful issue are the Collector and his officers. It should be their business, after a general review of the circumstances, to arrive at a conclusion as to whether the 12-annas to 14-annas rate per beegah ought to be maintained as the ryots say, or to be raised to 18 to 20-annas as the zemindars say; and if not, then whether it should be raised to something between 14 annas and 18 annas. * *

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Para. 18, contd.

(b). I recommend that the local Government should have the power, upon good cause shown, of appointing the Collector or other officer to settle, authoritatively, disputes of the nature above described, and to enforce awards. * * The Collector would, after due enquiry, and after hearing both parties, fix the rates of rent according to the circumstances, and with such guidance as the existing laws might afford him, and decide suits for rent, both current dues and arrears. The Collector should also have the power of fixing the disputed rents for a short term of years, so that there might be no chance of need arising for again exercising interposition within a reasonable period.

19. It did not occur to Sir Richard Temple to ask himself whether these enquiries by the Collector would not be just eighty-five years too late. The proper time for their institution was before the formation of the decennial settlement. Had the enquiries been made then, they would have secured to the Government a large amount of revenue from concealed cultivation in zemindaries, which was not included in the revenue assessed at the permanent settlement, owing to frauds that were at length condoned in Regulation II of 1819. They would also have ensured a proper record of ryots' rights and of their permanent rates of assessment. But the Government of 1789, not to harass the people, and from a misplaced confidence in the zemindars of that day, abstained from such enquiries, thereby sacrificing a considerable revenue. That which the Government would not do for the advantage of the State in 1789, it was required in 1875 to do for the benefit of zemindars, who, retaining a rental six to tenfold that of 1793, yet paid only the same assessment as in that year. For them it was required that every ten years, or more frequently, Government officers should assess ryots so as to secure for zemindars the unearned increment which belongs to ryots (Appendix XVI, para. 28), and should measure ryots' lands, though Sir John Shore had said:¹ "In some parts of the country, I under-

¹ Sir John Shore's statement is corroborated by the Committee of Revenue, in 1786, who observed: "The Committee, advertg to the nature of a zemindar's office and the deed by which he is vested with the superintendence and collection of the revenues of a zemindary, are of opinion that he does not derive a right from either of making a hustabood of a zemindari by measurement, or of changing the mode or rate of collecting the revenue without the previous permission of Government" (see also Appendix IX, para. 7, IIc).

stand that the zemindar is by prescription precluded from measuring the lands of the ryots whilst they pay the rents according to the pottah and jumabundi;" though section 60 of Regulation VIII of 1793 allowed a general measurement of the pergunnah only for the purpose of equalising and correcting the fixed assessment, and though zemindars themselves were exempted from assessment on land fraudulently included in their zemindaries, Government in Regulation II of 1819 having enacted—

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Para. 20.

"that all claims by the revenue authorities on behalf of Government to additional revenue for the lands which were at the period of the decennial settlement included within the limits of estates for which a permanent settlement has been concluded, whether on the plea of error or fraud, or on any pretext whatever, saving of course the case of lands expressly excluded from the operation of the settlement, such as lakheraj and thannadary lands, shall be and be considered wholly illegal and invalid."

20. The Bill was passed into "law on 10th July 1876, as Bengal Council's Act VI of 1876, or an Act to provide for inquiry into disputes regarding rent, and to prevent agrarian disturbances." It was to be in force for only three years, and was to take effect in only particular tracts to which the Government might extend the Act by an order in the *Calcutta Gazette*. During the progress of the Bill, discussion was raised on some points of permanent interest. Babu Kristodas Pal (24th April 1875) observed: "Many conflicting decisions had been passed by the High Court upon the proportion which the rent should bear to the produce of the land; and from the day Act X of 1859 was passed to this day, the question of rate of rent remained unsolved." To help its solution, Babu Kristodas Pal suggested Mr. Gladstone's three courses: "One was this, that the gross produce of the land should be divided between the zemindar and the ryot in a definite proportion, that was to say, three-fourths going to the ryot and one-fourth to the zemindar as rent." In suggesting this, Babu Kristodas was faithful to the traditions of the British Indian Association (Appendix XIX, para. 26, vii). The following comments were passed on the suggestion:—

Fair and equit-
able rent.

I.—MR. C. STEVENS, COLLECTOR OF NUDDEA (8th May 1875).

It is obvious that the uniformity of the rule is merely superficial, since the profits would vary with every kind of crop sown. It is manifestly unfair that the landlord should obtain as large a share in the gross produce of a crop requiring high cultivation, such as tobacco, does in the case of a field of kolai, in which the ryot's labour is

APP. XXI. in comparison. It seems plain that the landlord ought to expect to receive nothing in the shape of rent until the cost of production of the crop has been paid for.

FAIR AND EQUITABLE RENT.

Para. 20, contd. II.—MR. F. B. PEACOCK, OFFICIATING COMMISSIONER OF DACCA (25th May 1875).

(a). This suggestion looks a fair proportion enough; but any sudden order that the produce of the land should be so divided in this district might lead to a very serious result. Here, from figures prepared some short time ago by a very old and experienced Deputy Collector, the zemindar's share is put down at one-twelfth to one-fortieth of the *net* profit, according to the crop grown.

(b). As will be seen from the Collector's report, the highest rents in the district are those paid in Vikrampore, where it is computed that the landlord's share of the profit does not exceed one-sixteenth. In Fureedpore I am given to understand that, speaking roughly, the rent paid to the zemindar represents one-fifth to one-eighth of the gross produce, which approaches that suggested by Babu Kristodas Pal; but the wide difference observable between two adjoining districts shows how difficult it would be to lay down any one rate for all the districts of Bengal, or even of a province of it.

III.—MR. W. H. D'OYLY, COLLECTOR OF RAJSHAHYE (17th May 1875).

(a). I would warn the Council not to accept the theory that quarter of the money-value of the produce should go to the zemindar as rent. The legal rent of land (*i.e.*, exclusive of illegal cesses) is seldom anywhere near quarter of the value of the produce, and no ryot could afford to pay so much. The annexed statement shows that the rent paid by the ryot varies from one-tenth to one-seventh of the value of the produce of the best quality lands for, variously, dhan, sugarcane, wheat, mulberry.

(b). (In a subsequent letter, dated 9th July 1876).—In my letter No. 795, dated 31st July 1875, I stated my opinion that the zemindar should not in any case be allowed more than one-eighth of the gross annual produce, and I gave my reasons, which it is not necessary to recapitulate. It will be seen from the present letter that the ryots themselves seem to think that that proportion is fair to occupaney ryots.

IV.—BURDWAN DISTRICT.

(a).—COLLECTOR (24th December 1876).

Rents in this district are very high at present, being *often*, according to Hunter's Statistical Account (page 72), even half the value of the gross produce.

(b).—BABOO JOYKISSEN MOOKERJEE (8th January 1877).

In the Hooghly, Burdwan, and other districts, the landholders get on an average half the value of the gross produce as their rent; and in those cases in which rent is paid in kind, the landholders' share of the gross produce varies from 7 to 9 annas, although the costs of cultivation are entirely paid by the ryots.

21. Babu Kristodas Pal suggested also a second mode of determining the fair and equitable rent payable by an occupancy ryot. His suggestion (24th April 1875) was—

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Para. 21.

I. That the rate of rent should be fixed on the competitive rate prevailing for the village or pergunnah. The competitive rate meant the rate of rent at which the jotedars or farmers, or other holders of land, let the land to cultivating ryots. There was a competition for land by the cultivating ryots, and the rent they paid was called the competitive rate. Taking that as the rate of rent, the rate for an occupancy ryot might be fixed at such a rate as would secure him the benefit of the tenant-right he enjoyed, and this could be done by allowing him a deduction at a certain percentage from the competitive rate so formed and determined. This suggestion was based upon the principle followed in the Oudh Rent Act. According to that Act the occupancy ryot was liable to pay the rate of rent, *minus* 12½ per cent. which a tenant-at-will paid.

II. Sir Richard Temple (25th March 1876) approved of the suggestion—

This was the very rule, and absolutely the very principle, on which all rents of occupancy tenants were adjusted in Northern India, in the Punjab, in Oudh, and in fact throughout Northern India. He ventured to say that there was no part of India in which this question was so minutely studied as in Northern India, and there was no province in which the variety of tenures was so great as in Northern India. You took first of all the average of what was called the pergunnah rate, which was what the landlord could get in the market in the shape of rent from a tenant-at-will. That was taken as the basis of the adjustment, and favourable rents were all calculated on that basis. One man had 5 per cent. advantage as compared with ordinary rates, another man had 10 per cent., another had 25 per cent., and some had even 50 per cent. Honourable Members who had served in that part of the country must be aware of this; and if the Council would consult the Punjab Tenant's Act, they would see exactly the same principle is laid down there.

III. The British Indian Association, in a letter dated 10th March 1876, improved on the suggestion—

(a). The majority of the present occupancy ryots having been in the position of tenants-at-will, the Committee submit that it would meet the ends of justice if an allowance were made to them in consideration of the occupancy rights conferred upon them by the legislature on the principle which has been recognised in the Oudh Rent Act.

(b). Under that Act, the rent of the occupancy ryot is fixed at 12½ per cent. less than the rent paid by the tenant-at-will. The Committee, however, are of opinion that this deduction is too low. They would recommend one-fourth, or 25 per cent.

(c). A prosperous tenantry is a source of strength to the zemindar, and the Committee hold that enough ought to be allowed to the occupancy ryot to enable him to pursue his industry with reasonable satisfaction.

(d). The proportion of one-fourth of the difference to the ryot, and three-fourths to the zemindar, in their opinion, would be fair and equitable.

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ABLE RENT.

Para. 21, contd.

(e). The Committee do not think that it will be difficult to ascertain the competitive rates as a rule. Where the land is let out to a tenant-at-will by the landlord, or by the person in receipt of rent direct, it may be easily ascertained.

(f). Where, however, the lands are held wholly by occupancy ryots, the competitive rates may be ascertained by reference to the rate of rent paid by "koorfa" ryots cultivating under occupancy ryots, or "jotedars." * * The Committee have adopted the principle of the competitive rate, because it is a fair test of the value of land. It is a sure indication of the share of the produce of the soil which the cultivating ryot usually receives; and where it is low, from whatever cause, the occupancy rent, as a rule, is also low.

If "a prosperous tenantry is a source of strength to the zemindar," then are zemindars weak-kneed through the greater part of Bengal and in Behar. The promise to the ear in extracts (a) and (b) is broken, however, to the hope in extracts (e) and (f), in the latter of which the abatement of one-fourth is allowed on the rent of koorfa ryots, who pay one-half the produce. The rent question is humorously solved in the statement that the competitive rate for the occupancy ryot is the rent which he obtains from his sub-ryot.

22. Competition lowers the rent when, from an abundance of waste land, zemindars compete for ryots. Competition raises the rate when (as in England) the farms and (as in many districts of Bengal) the ryots' holdings are fewer than the applicants for them. But there is this difference, that in Bengal the competition of ryots, who can do nothing else if they do not cultivate, produces a cottier tenantry; whereas in England, however great the number of competitors for a farm, the rent is limited by the rate of interest obtainable in other pursuits or investments for the farming capital of the competitors.

23. In the discussions of the competitive rate suggested by Babu Kristodas Pal and the British Indian Association, and of the related question of prevailing rates of rent for the same classes of lands and of ryots, the following remarks were offered:—

I.—PERGUNNAH RATES.

(a).—SIR R. TEMPLE (*18th April 1876*).

Still the section leaves untouched the deeper, the broader question as to what, in reason and justice, ought to be the prevailing rate for occupancy ryots in any district or division of a district; nor is any test afforded in any part of the law for the decision of this question: yet this is the question which agitates the thoughts both of zemindar and ryot throughout the country.

The authors of the permanent settlement in 1793 required of the zemindars that they should take from the ryots no more than the established pergunnah rates. In 1876 "the question as to what, in reason and justice, *ought to be* the prevailing rate for ryots," though completely subverting a fundamental stipulation of the permanent settlement, was held to be no departure from that compact, in which the faith of Government was as solemnly pledged to the ryot as to the zemindar.

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PERGUNNAH
RATES.
Para. 23, contd.

(b).—COLLECTOR OF DINAGEPore (29th June 1876).

(1). Dinagepore was almost all included in the Raj of the name, which was held under khas management by Mr. G. Hatch, the Collector, when the decennial settlement was made. He recorded the rates of rent in the district, and they are looked upon as unalterable to this day. Mr. Hatch fully entered into the spirit of the Regulations, which was, I believe, elsewhere disregarded, and in his settlement fixed the demand of the zemindar from the ryot, as well as that of Government from the zemindar, in perpetuity for ever.

(2). This principle is recognised in the district; and although the ryots have from time to time paid cesses and mathoots, Mr. Hatch's *nirikh* is, both by zemindar and ryot, regarded as unalterable, and zemindars do not attempt to enhance rent, except on the ground of lands held in excess.

(c).—COLLECTOR OF BOGRA (15th July 1876).

In the suits for enhancement, the zemindars in this district generally are striving to obtain merely what they have been in the habit of receiving as rent and customary cesses in an amalgamated form. In one instance, where the villagers clamoured against what they called an "*abwab*" (the meaning of which word I found they were unable to explain to me), I found that the money of which they wished to evade the payment was an enhancement of 4 annas in the rupee, which they had agreed to pay 42 years before (*i.e.*, in 1832), and had cheerfully paid till the recent disturbances in Pubna led to the widely-spread belief that the Queen was going to resume all revenue-paying estates from the zemindars and let them to the ryots at reduced rates.

The Regulations of 1793 prohibited the levy of fresh *abwabs*; but the Collector thought it quite proper that zemindars in 1832 should levy such *abwabs*.

(d).—ZEMINDARS OF EASTERN BENGAL (September 1876).

The gradual rise of rents took place in three different shapes: (1) regular increased rates of rent; (2) supplementary payments in addition to regular rents, in the form of *abwabs* or cesses, which used to be

APP. XXI. paid, because ryots preferred to keep those additional payments distinct from regular rents, in order that, if produce ever fell back to its original low prices, those payments could be easily discontinued; and zemindars did not object to the arrangement so long as the increased payments were actually made.

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RATES.

Para. 23, contd.

(e).—COLLECTOR OF TIPPERAH (26th July 1876).

(See passage quoted in para. 14.)

(f).—MR. E. LOWIS, COMMISSIONER, CHITTAGONG DIVISION (19th August 1876).

(1). The permanent settlement was made on the basis of the old collection papers, and the zemindars were instructed to consolidate the *assul* and *abwabs* into one sum, which was to be the future standard, further cesses being absolutely forbidden. These rules were never enforced; the zemindars continued to levy cesses, while *the people cling to their assul* as they had done, and now matters have come to a crisis, for the villagers find that they will be supported in resisting payment of cesses; they are therefore doing so, and refusing to allow the zemindars any share in the increased value of produce, while the zemindars are calling out that they cannot obtain that share in the profits derivable from land which is their due. * *

(2). Under native rule it is not to be supposed that the produce of the cultivators was weighed and ascertained every year, or that the yearly amount payable in money instead of grain was always varying,—a state of things which any nice adjustment of the State dues would naturally lead to. On the contrary, it very soon came to be known how much on an average a particular locality yielded, and a “*nirikh*,” or rate, soon came to be established as that at which rents in the neighbourhood were to be calculated, and *at every fresh measurement and investigation into the resources of the land, these rates were raised.*

Mr. Lowis erred in the passage which is italicised. Sir John Shore stated distinctly that in the periodical revisions, land brought into cultivation since the preceding revision was assessed at the old pergunnah rate, and that the old rate for the old lands was not disturbed. Mr. Lowis himself testifies that above eighty years after the decennial settlement the people clung to the old pergunnah rates.

(3). When the regular system (Mr. Lowis’ misconception of it has been just corrected) was abandoned for the arbitrary one of levying cesses in proportion to the “*nirikh*,” the people still clung to the original rates as the proper one, treating the *abwabs* as exactions not contemplated by the laws which they professed to be governed by. At the time of the permanent settlement some of these rates had become merged in the *assul*, thus raising the “*nirikh*” improperly, but most of them were still levied distinctly.

(4). After our accession to the Dewani, attempts were made to ascertain the resources of the land, but with no great success, since the machinery, through which alone such information could be obtained, had

been allowed to fall into decay. However, an attempt was made, a fresh assessment imposed and declared permanent, the zemindars being debarred from any longer levying cesses, but allowed to enrich themselves by the future improved condition of agriculture. This fresh assessment, based on consolidation of the *assul* with such cesses as were not excessive, raised the "nirikh," and such nirikh should have continued in force until raised in a legitimate¹ manner after a measurement and ascertainment of the resources of the land. This was not done, but rents were raised on various illegitimate methods, as before.

(5). The *assul*, however, has never been lost sight of; and, so far as my experience of Lower Bengal goes, the pergunnah, or dosohala, "nirikh" is known to all,—the rate, that is, which was fixed at the time of the permanent settlement as fair and equitable, *with regard to the then value of the produce*.

The words in italics are not supported by the Regulations of 1793 as regards the fixed money-rents of that day.

(g). It appears from the preceding extracts that in the present day, in various districts of Bengal, the old pergunnah rates of 1793 do exist, and that by their side exist *abwabs* old and new, of which the new or fresh *abwabs* were peremptorily prohibited by the Regulations of the permanent settlement. In these districts, therefore, at any rate, means exist of fulfilling the engagements in which the faith of Government was as solemnly pledged to the ryot as to the zemindar.

II.—KOORFA RYOTS (*or sub-ryots, or the ryots of ryots*).

(a).—COLLECTOR OF DINAGEPORE (29th June 1876).

(1). Enhancing rent on the ground of its being below what other neighbouring ryots paid under similar circumstances, could occur only by comparing jotedars with *koorpha*, *adhiyar*, or *chaukrani* ryots, and this would be repugnant to the customs of the district. These last-mentioned three classes of ryots generally hold under the jotedars who pay rent to the zemindar, and often pay him in money or in produce three times what he pays the zemindar. They are the actual cultivators of the soil, and what they pay represents the rent which can by competition be obtained for the land according to the ordinary rules of demand and supply.

(2). This is, however, complicated by the fact that the jotedar is frequently sufficiently wealthy to be a money-lender, and, either by absolute lending or by some *adhiyari* conditions, finds capital for cultivation, supplying seed, corn, and maintenance, and sometimes cattle and ploughs.

(3). The rent, therefore, becomes mixed up with the question of interest inextricably, and what the jotedar receives really affords no criterion of what the zemindar ought to receive.

¹ The laws did not provide for any enhancement whatever.

APP. XXI. (4). The cultivator cannot afford to pay as much rent to the zemindar as he pays to the jotedar, because the latter practically takes the risk of bad seasons, and this risk would fall on the cultivator if he paid an equally high rent to the zemindar.

KORFA RYOTS.

Para. 23, contd.

(b).—COLLECTOR OF RAJSHAHYE (21st July 1876).

It is not generally the custom in this district to demand from a ryot who pays his rent directly to the land-holder, although his right of occupancy has not accrued, a rate of rent higher than that paid by occupancy ryots; so to find the competitive rate, the rate paid by a khurfa ryot should only be taken as the basis.

(c).—COLLECTOR OF BURDWAN (29th July 1876).

(1). The half-produce rents paid by the korfa or under-tenants.

(2). In view of the particular circumstances of this district, I believe it to be quite possible that in some cases the Moonsiffs may interpret the korfa half-produce rate to be the "average rate of rent paid by non-occupancy ryots." And in support of my belief that this interpretation is a possible one, I beg to refer to para. 10 of the Minute, where the British Indian Association remark that, failing other evidences, "*the competitive rate may be ascertained by reference to the rate of rent paid by 'korfa' ryots cultivating under occupancy ryots.*" That, if I am not mistaken, is a plain warning of what the zemindars' tactics will be in these cases. When korfa ryots cannot pay, they run away, and thus the high rents paid by them mean bad security. The occupancy ryot is a man of substance, and ought not to be compared with the korfa ryot.

(d).—MR. C. T. BUCKLAND, COMMISSIONER, PRESIDENCY DIVISION (31st August 1876).

I find the great body of intelligent natives here (not being zemindars) firmly impressed with the conviction that, according to the custom of the country, the only ryot who can be in any proper sense rack-rented is the *korfa ryot*, the sub-tenant of a ryot, who is entitled to a bare subsistence and no more. Other ryots, though in respect of some lands held by them they may not have acquired a legal right of occupancy, are still entitled to hold at the same rates as their neighbours, and do, in fact, so hold. The proposal of the British Indian Association that we should in case of doubt fix occupancy by any direct reference to *korfa* rates, is looked upon as revolutionary, and would not be tolerated, unless, indeed, the margins allowed were of the most liberal description.

(e).—SIR W. HERSCHEL, LATELY COLLECTOR OF HOOGHLY (1st September 1876).

(1). There is in every village a competitive rate, very different, indeed, from the village rate of rent, and I greatly fear that this is the competitive rate on which the British Indian Association have so liber-

ally reckoned when they offer to give up 25 per cent.¹ of it. They may well do so, for it is far above the rate paid by a ryot, whether occupant or non-occupant. It is the rent in cash or kind paid or promised to a ryot—not by a ryot. It is very rare that any zemindar receives such rents. If he does, he does it because he likes to nestle down close to the soil here and there, and therefore preserves a piece of land in his own farm as a ryot, and, growing tired of the toil involved in looking after coolies, ends by resorting to this most jealous admission of a fellow-creature to an interest in the land, till the harvest is gathered, but no longer. The labourer so taken into partnership is no more a ryot than the old woman in my compound is owner of my cocks and hens, because I allow her to keep one chicken in every two she rears.

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KORFA RYOTS.
Para. 23, contd.

(2). I am amazed to find the Association quietly referring to the rates paid by "korfa" cultivators as a basis. I can imagine the storm of controversy that would be raised if ever their suggestion were put into practice. There is no resemblance between the loafing young scapegrace of the village whose relatives insist on his earning his own meal, at least as a test of his honesty, or the broken-down old coolie who has neither wife nor children to support, and who probably sleeps in any shed he can find, or any other hard-driven or careless korfa cultivator on the one hand, and the ryot whose lands they plough on the other. There is not a zemindar in all Bengal who would dream of asking korfa rates from any decent man with a family who applied to him for a "palataka" ryot's holding. I defy any Court or Revenue Officer by any process of reasoning to satisfy the public that their inference from a korfa cultivator's rates to the rate payable by a ryot, occupant or non-occupant, is fair and equitable. The whole science of political economy would be exhausted in the preliminary questions.

(3). No doubt korfa, like every other word of the same import, shades off at some few places into "ryot," but in general, to become a ryot on his own land some day is the ambition of a korfa cultivator. He never hopes to be that on the land he is then cultivating. The tenacity of the ryot in keeping the korfa down is far greater than that of any landlord towards his tenants; and it is only when zemindars themselves admit the korfa and treat him as a ryot, that he becomes one on the land he ploughs as such. Subsistence allowance for one person is the usual thing that the korfa gets out of the soil, and the ryot has to bear the risks of season in the long run, though it may not be so in the contract.

(4). In any discussion that takes place, I trust it will be borne in mind that any reference to the rents paid to a ryot as a test of the sum which a ryot should pay to the zemindar, is launching on to a sea of controversy. It will not do to allow any reference to that class of cultivators as a guide, even if it be shown that in some places there are settled cultivators of that name. If there be, it is because the zemindar has voluntarily raised them to the class of ryots, who are tenants-at-will,

¹ I am not speaking loosely: it is the Association which does so. They speak at one place of giving up 25 per cent. of the whole, at another of giving up that proportion of the enhancement only. I seriously think they are willing to do either, as far as they have thought over the matter.

APP. XXI. with rights totally distinct from those of *korfa* tenants, as ordinarily understood; and it is as such, and not as *korfa*, that they should be described.

KORFA RYOTS.

Para. 23, contd.

(5). The competitive rate among tenants-at-will is the thing in quest; *korfa* tenants, or their corresponding class, are to be found everywhere in abundance, though scarcely known to the rent Courts otherwise than incidentally. Anything that appears to sanction a reference to their payments as a guide to the determination of rent by a simple rule, will completely change the position of the bulk of the agricultural population in Bengal.

(f).—JOINT MAGISTRATE, MYMENSING (*July 1876*).

Of course the objection would be obviated if it were easy to ascertain the competitive rate by reference to the rate of rent paid by *kurfa* ryots cultivating under the occupancy ryot or jotedar. In this district, the *melayer* system is not uncommon, half the produce being paid as rent by the ryot cultivating under a recorded ryotwari holder; but this would obviously be of little or no assistance in the determination of the competitive rent. On the other hand, in those cases where the rent is not thus paid in kind, the evidence of its amount would not be in the hands of the zemindar or other superior landlord; and when it comes to a question of enhancing generally the rates prevalent in any *moazzah*, the occupancy ryots would combine together, and would almost invariably enlist their sub-tenants on their side to withhold the necessary evidence. * * It would be an easy matter for them to make up a mass of evidence, documentary as well as oral, in order to prove rates according to their own caprice.

(g). Some ryots delight in painting zemindars in the blackest colours, imputing to the latter all that is done by their numerous *gomashtah*. In the preceding extracts many ryots are painted in the same colours, and with evident fidelity to truth, by gentlemen whose sympathies were with the ryots as a class. The extracts show that opportunity and circumstances make the main difference between zemindar and ryot; with this advantage in favour of the zemindar, that not being brought up in penury, his natural feelings would tend to showing greater consideration to his ryots than the ryot would show to his sub-ryot. One chief use of the extracts is to inculcate moderate views in the question of zemindar and ryot; another, to convey the lesson that the best state for the actual cultivator of the soil would be one in which he might be proprietor of his holding in fee simple.

III.—NON-OCCUPANCY RYOTS, OR PREVAILING RATE OF RENT.

(a).—SIR R. TEMPLE (*18th April 1876*).

(1). It seems to be admitted on all hands that rules will hardly be needed in the law regarding the determination of the rent of the non-

occupancy ryot; that may generally be left to mutual agreement between the landlord and tenant, and to adjust itself as prices and market rates adjust themselves. This rent rate of the non-occupancy ryot may be taken as the basis for determining the rent of the occupancy ryot.

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(2). The proportion borne by the number of occupancy ryots to that of non-occupancy cannot be precisely stated; it is probably changing from time to time as tenants go on holding for more than twelve years and so acquire an occupancy status. Certainly the number of occupancy ryots represents a very large portion, perhaps the majority, of the whole tenantry of the country.

Para. 23, contd.

(3). Still there are quite enough non-occupancy ryots in every district under zemindars, sub-proprietors, and tenure-holders of different classes, whose rent rates will clearly indicate what the average amount of rent would be if adjusted in open market, without reference to any special rights or status which the tenant might have. There may be variations in such rent, or questions whether in particular cases the rent has been augmented up to a rack-rent or reduced for special reasons, and so on, but the average rent rates of non-occupancy ryots in each district or part of a district are, as I understand, well known and readily ascertainable.

By the Regulations of 1793, the ryot was to pay as rent the ancient customary pergunnah rate, the custom, perforce, being that established by the practice of the majority. Again, under Act X of 1859, when an occupancy ryot, *i.e.*, a ryot of the class of tenants who constitute the majority, is liable to enhancement of rent, the equitable rate to which his rent may be raised is that prevailing in adjacent lands for the same class of ryots;—yet in the foregoing extract the rent of the minority of ryots, that is, the non-occupancy ryots, was adopted as the prevailing rate of rent for determining that of the majority of ryots, *viz.*, the occupancy ryots.

(b).—MR. F. W. V. PETERSON, DEPUTY COMMISSIONER, JULPIGOREE (*1st July 1876*).

As a rule, non-occupancy ryots have not such good descriptions of land in their cultivation as occupancy ryots.

(c).—COLLECTOR OF RAJSHAHYE (*9th July 1876*).

The rates of rent of several descriptions of land in a pergunnah or part of a pergunnah have for some time been fixed by the zemindars, and both the occupancy and the non-occupancy ryots pay their rents at those rates. The rent paid by the occupancy ryot is, therefore, the same as that paid by the non-occupancy ryot. The reason is obvious—the zemindars do not allow any concession to occupancy ryots. They do not admit the right of such ryots. They call the lands of these ryots, as well as those of non-occupancy ryots, 'sursary jotes,' that is, lands from which the tenants can be ejected at their pleasure. They do

APP. XXI. not wish to make a distinction between the two kinds of ryots, and consequently take the same rate of rent from each.

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Para. 23, contd.

(d).—COLLECTOR OF BOGRA (*15th July 1876*).

The third objection is that the rates paid by non-occupancy ryots would be always found, by judicial enquiry, to be exactly as stated by the landlord, who can always produce the non-occupancy ryots on his side by the remission of the balances due, and other slight favours. The zemindar has the non-occupancy ryot in his power. Further, such an average, if fairly obtained even, would be misleading. The average should only be taken of the rent paid by non-occupancy ryots for land of the same description as that whose rent is to be enhanced, otherwise the same injustice would be perpetrated as was done by the old per-gunnah rate, which was frequently supposed to be a rate fixed by custom for all lands, instead of varying according to the description of the land.

(e).—COLLECTOR OF BURDWAN (*29th July 1876*).

There is a consensus of opinion that the cash rates paid by men of the ryot class (pykasht ryots) and others, who have held less than 12 years, are very little higher than the rates paid by occupancy ryots. A scrutiny of the rents now actually being paid in 24 villages, in eight pergunnahs, proved that the non-occupancy rates hardly ever exceeded the occupancy ryots' rates by more than 8 annas a beegah, and often not so much. An occupancy ryot holding at 3 rupees a new beegah, where the non-occupancy rate was Rs. 3-8, would, under the law, have his rent reduced to Rs. 2-13; and hence abatement suits would be numerous, and the law would very soon have to be altered again.

(f).—MR. LARMINIE, COLLECTOR OF BANKOOKA (*8th August 1876*).

Where land is much sought after, non-occupancy rates are very high, and if the circumstances which led to the increased value of the land are of comparatively recent date, there is very large margin between non-occupancy and occupancy rates. The increase of rent demandable by the landlord would be so great as to make a serious and sudden change in their income, and would lead to intense dissatisfaction. On the other hand, if the difference between the two classes of rates be not small, the landlord would suffer a sudden decrease of his income, perhaps amounting to 20 per cent.

(g).—MR. D. R. LYALL, COLLECTOR OF DACCA (*28th August 1876*).

There is a fallacy in the proposal that the rent of the occupancy ryot should be 25 per cent. less than that of the non-occupancy ryot. The fallacy is the belief that the occupancy ryot pays less than a non-occupancy ryot. The contrary is the case here now; and the contrary was the case at the time of the permanent settlement, as the following extract from page 64 of vol. ii. of Harington's Analysis shows :

The extract is from the report of Messrs. Anderson, Crofts, and Boyle, who were in 1776 appointed Commissioners to collect materials for the ensuing settlement, and whose statement carries great weight. They say, speaking of ryots, "the most general distinction, however, with respect to their tenures is that of koodkasht and pykasht. The name of koodkasht is given to those ryots who are inhabitants of the village to which the lands that they cultivate belong. *Their right of possession*, whether it arises from an actual property in the soil or from length of occupancy, is considered stronger than that of other ryots, and *they generally pay the highest rent for the lands which they hold*. The pykasht, on the contrary, rent land belonging to a village in which they do not reside. They are considered as tenants-at-will, and having only a temporary and accidental interest in the soil which they cultivate, will not submit to so high a rent as the preceding class of ryots." What was the case in 1778 is the case still in many parts of this district, and in no part does the non-occupancy ryot pay more. He pays the same in all parts of the district where there is not much waste land, and he pays very considerably less in the less highly cultivated parts.

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(4).—MEMORIAL OF ZEMINDARS OF EASTERN BENGAL (September 1876).

(1). In Eastern Bengal, generally, there are very few instances of regular non-occupancy ryots who made periodical settlements of good land upon rates (higher than those paid by occupancy ryots) determined by competition and mutual agreement at the commencement of their periods of settlement. This, your memorialists believe, is the class of ryots meant by your Honour when speaking of non-occupancy ryots paying competitive rates of rent.

(2). The non-occupancy ryots of this quarter, those that take up holdings vacated by occupancy ryots, do not answer this description. The custom generally in this quarter is to have, in the zemindary papers, one general rate of rent for all ryots holding the same class of land in a mehal. In some mehals there is a difference, owing to 1st class, 2nd class, or 3rd class, lands; but there is no difference made as to rent on account of difference of status of ryots. Hence the rates paid by non-occupancy ryots cannot, in Eastern Bengal at least, be taken as the competitive rate.

(3). Almost all non-occupancy ryots in these districts consist of such as are brought generally at the expense of the zemindar, to settle in ill-conditioned lands, such as jungle lands, or very low lands which are subject to early and heavy inundations, or chur lands in which sand predominates in the soil, or lands lying at inconvenient distances from villages. Zemindars are in consequence put to heavy expense in inducing ryots to settle in such localities, and such ryots are always allowed to pay very low rents at first. They do not hold the same lands from year to year, but change their holdings very often, partly in the hope of getting good crops from untouched lands, and partly to select by actual examination some good spot out of the waste of uncultivated land lying in all directions. After these ryots have settled for some time, they pay higher rates, but it is only after the tracts are brought to a high state of cultivation, and thickly inhabited, that anything like com-

APP. XXI. NON-OCCUPANCY RYOTS, OR PRE-VALUING RATE OF RENT. petty or fair rents can be expected from them. If the rents paid by this class of non-occupancy ryots be taken as the competitive rates for the whole of those mehals, which partly consist of such lands, there will be a most serious reduction of rents all round, and zemindars will never try to extend cultivation by holding out the inducement of low rents to fresh comers upon ill-conditioned lands.

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(i).—MOORSBEDABAD ASSOCIATION (*12th September 1876*).

The number of the non-occupancy ryots is very small when compared with the occupancy ryots.

(k).—MR. E. G. GLAZIER COLLECTOR OF RUNGPORE (*16th August 1876*).

(1). Rai Ramani Mohun Chowdhri, of Toosbhandar, a member of the class of zemindars honourably distinguished for his own moderation in dealing with his ryots, says that the zemindars will rack-rent the non-occupancy ryots, in order that they may thus increase the rent of the occupancy ryots. I shall quote his words—"As the rate of the tenants-at-will is an important question in the determination of rent of the occupancy ryots, and therefore of so much interest to the zemindars, it will not unfrequently occur that the zemindar will use unfair means to exact from the non-occupancy ryot exorbitant rates of rent."

Similar testimony was given, or opinions were expressed, by several Collectors and a Commissioner of a division.

24. Under Act X of 1859, the expense of litigation in suits for the enhancement of rent, has greatly increased (para. 1); but by Act VIII of 1869 (Bengal Council) ryots were compensated, in a measure, by the transfer of rent suits to the Civil Courts from Revenue Courts, which, it has been stated by good authority (para. 10), had been very facile in allowing application for enhancement. On the other hand, the zemindars allege that the Civil Courts are resolute in throwing a great burden of proof on zemindars. On 22nd March 1878, the Hon'ble Kristodas Pal moved for leave to introduce a Bill "to provide for the settlement of the rent of lands on the application of landholders or ryots." The intention was "that where the zemindar should be willing to avail himself of the agency of the Revenue authorities in making settlement, he should be allowed the benefit of such agency, provided he paid the cost;" thus throwing upon the Government the labour and trouble of making a ryotwar settlement for the benefit of the zemindar, though in 1793 Government had alienated a vast amount of increment of land revenue in favour of zemindars, because it shrunk from a ryotwar settlement in the interests of the State. Eventually the Bill was dropped.

25. On 1st January 1879 the Hon'ble Mr. Maekenzie

moved for leave to introduce into the Bengal Legislative Council a Bill to provide for the more speedy realisation of rent, and to amend the law relating to rent in Bengal. The Bill was referred to a Select Committee, who in a preliminary report incline to the opinion that, it should not be proceeded with further, until sufficient time has been allowed for obtaining a full discussion of its provisions by all classes, official and non-official, to which end the Bill has been amended by the Committee. An important question is involved in one of the provisions of the Bill, *viz.*, the transfer by sale of the holding of an occupancy ryot. In moving the first reading of the Bill Mr. Mackenzie explained its origin—

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laws.

Honourable Members are doubtless aware that it has frequently been urged upon Government, and was indeed at one time proposed by the Government itself, to remove the cognisance of simple rent suits from the Civil Courts (to which in all permanently settled districts they were made over in 1869), and to restore such cases to the Collectors' files. That was the view embodied in the ninth section of Sir R. Temple's draft Bill to amend the substantive law of rent in Bengal, which was circulated and canvassed in 1876. When it was decided to abandon for the present the attempt to regulate by law the economic problem of enhancement, it was still proposed to simplify, as it was termed, the procedure of rent recovery by entrusting to the Revenue authorities the summary disposal of all suits for rent where the claim was undisputed, relegating the parties to the Civil Court whenever it might appear that there was really a dispute between them.

26. As already observed, the Bill will be held over till the next session of the Bengal Council in December 1879 or January 1880, when there may be attempted a revision of the substantive rent law. On this latter subject the following passages occur in a Resolution of the Bengal Government, dated 22nd October 1878:—

The Board, however, express a strong opinion that the whole subject of the rent law, and of the relations between the landlord and tenant, will ere long have to be dealt with in a comprehensive manner. They say—

“The Board are of opinion that the whole subject of the rent law, and of the relation between the landlord and tenant, will ere long force itself before the Government, and require to be dealt with in a comprehensive manner. It is an enormous subject to face, and so beset with difficulties that there is great danger of its raising such a controversy as may destroy the probability of any useful measure being passed; but such a measure is urgently called for. Whether the old condition of status, which is now rapidly receding, was inferior to the present relations of mere contract, which are year by year supplanting it, may be an open question, but that the one system must disappear and the other replace it, is now inevitable. That being so, it is the more necessary to be prepared with a code of law which may admit of being applied with

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equity and constructive effect, and the Board cannot say that the present code fulfils these conditions. Act X of 1859, replaced by Act VIII of 1869 (Bengal Council), have no doubt their merits; but the last eighteen years' experience has shown many defects and mistakes in them, which are continually sapping the agricultural prosperity of the country, and that the more effectually as the law is the more resorted to. The important subject of occupancy rights, for instance, a most beneficial provision in its original conception, has now been reduced to a state of chaos by conflicting decisions, and it is uncertain whether more than one person can have an occupancy right in the same land, and if not, who of the many grades of under-tenants can successfully claim it. Again, the zemindar's right of suit for every kist the day after it is due, the ryot's right of depositing anything he likes, and calling it his rent, all require to be carefully reconsidered, and kept within safer limits. Still more, the need of a simpler machinery for recovering arrears of rent, including cesses, is urgently called for. The difficulties of legislation may be postponed, perhaps, for another year or two, but the Board are disposed to think that the sooner the subject is grappled with the better."

The Lieutenant-Governor thinks it very possible that "the revision of the Rent Law, desired by the Board, may have eventually to be taken in hand, though there is at present, apparently, no very marked demand for this, and he will be very glad to receive from the Board a draft of such a law. It is, however, of urgent importance to give the zemindar the means of realising more readily his undisputed rents, and at the same time to place the tenant-right of the ryot on a firmer basis; these two ends the Lieutenant-Governor hopes to secure at no very distant date. He could not hope for any such result were the necessary measures made a part of a general codification of the Rent Law, which it might take years to settle."

27. It appears from this Appendix that if Act X of 1859 has delivered ryots from some greivous evils, it has deteriorated their status in other respects. For the ryot's protection, rent cannot be enhanced except through a suit in a Civil Court; but the expenses of litigation, which the zemindar can bear, but not the ryot, have increased; occasions for enhancement of rent have been multiplied; and suits for recovery and enhancement of rent, with their attendant heavy costs of litigation, have greatly increased, while the principles for determining the proper rent payable by the ryot are ill defined, and considerations have been imported into the discussion for determining those principles, of a character so complicated and embarrassing as to evidence, by their marked contrast to the simplicity of the pergunnah rate in 1793, how great has been the departure (to the ryot's prejudice) from the engagements of that year, in which the faith of Government was as solemnly pledged to the ryot as to the zemindar.

APPENDIX XXII.

LAND TENURES IN THE WEST.

The feudal system.

1. In European states the oldest forms of property in land were of the same type.

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I.—WESTERN WORLD.

For many years past there has been sufficient evidence to warrant the assertion that the oldest discoverable forms of property in land were forms of collective property, and to justify the conjecture that separate property had grown through a series (though not always an identical series) of changes out of collective property or ownership in common. But the testimony which was furnished by the Western World had one peculiarity. The forms of collective property which had survived and were open to actual observation were believed to be found exclusively in countries peopled by the Slavonic race. It is true that historical scholars who had made a special study of the evidence concerning ancient Teutonic holdings, as, for example, the early English holdings, might have been able to assert of them that they pointed to the same conclusions as the Slavonic forms of village property; but the existing law of property in land, its actual distribution, and the modes of enjoying it, were supposed to have been exclusively determined in Teutonic countries by their later history.

Maine's Village
Communities,
Lecture III,
page 77.

II.—THE MARK.

The ancient Teutonic cultivating community, as it existed in Germany itself, appears to have been thus organised: It consisted of a number of families standing in a proprietary relation to a district divided into three parts: These three portions were the mark of the township or village, the common mark or waste, and the arable mark or cultivated area. The community inhabited the village, held the common mark in mixed ownership, and cultivated the arable mark in lots appropriated to the several families.

(a).—THE TOWNSHIP.

Each family in the township was governed by its own free head or *paterfamilias*. The precinct of the family dwelling-house could be entered by nobody but himself and those under his *patria potestas*, not even by officers of the law, for he himself made law within, and enforced law made without. But while he stood under no relations controllable by others to the members of his family, he stood in a number of very

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intricate relations to the other heads of families. The sphere of usage or customary law was not the family, but the connection of one family with another and with the aggregate community.

(b).—THE COMMON MARK.

Confining ourselves to proprietary relations, we find that his rights (those of the *paterfamilias*), or (what is the same thing) the rights of his family over the common mark, are controlled or modified by the rights of every other family. It is a strict ownership in common, both in theory and in practice. When cattle grazed on the common pasture, or when the householder felled wood in the common forest, an elected or hereditary officer watched to see that the common domain was equitably enjoyed.

(c).—THE ARABLE MARK.

(1). But the proprietary relation of the householder which has most interest for us is his relation to the arable mark. It seems always in theory to have been originally cut out of the common mark, which, indeed, can only be described as the portion of the village domain not appropriated to cultivation. In this universally recognised original severance of the arable mark from the common mark, we come very close upon the beginning of separate or individual property.

(2). The cultivated land of the Teutonic village community appears almost invariably to have been divided into three great fields. A rude rotation of crops was the object of this threefold division, and it was intended that each field should lie fallow once in three years.

(3). The fields under tillage were not, however, cultivated by labour in common. Each householder has his own family lot in each of the three fields, and this he tills by his own labour and that of his sons and slaves. But he cannot cultivate as he pleases. He must sow the same crop as the rest of the community, and allow his lot in the uncultivated field to lie fallow with the others. Nothing he does must interfere with the right of other households to have pasture for sheep and oxen in the fallow and among the stables of the fields under tillage. * *

(4). The evidence appears to me to establish that the arable mark of the Teutonic village community was occasionally shifted from one part of the general village domain to another. It seems also to show that the original distribution of the arable area was always into exactly equal portions, corresponding to the number of free families in the township.

(5). Nor can it be seriously doubted upon the evidence that the proprietary equality of the families composing the group was at first still further secured by a periodical redistribution of the several assignments. The point is one of some importance. One stage in the transition from collective to individual property was reached when the part of the domain under cultivation was allotted among the Teutonic races to the several families of the township: another was gained when the system of 'shifting severalties' came to an end, and each family was confirmed for a perpetuity in the enjoyment of its several lots of land. But there appears to be no country inhabited by an Aryan race in which traces do not remain of the ancient periodical redistribution. It has continued

to our own day in the Russian villages. Among the Hindoo villagers there are widely extending traditions of the practice; and it was doubtless the source of certain usages, to be hereafter described, which have survived to our own day in England and Germany.

2. Mr. Hearn, in his work on *The Aryan Household*, gives a similar account of the Mark, from which the following may be quoted:—

I. I have said that, so far as related to his house and its enclosure, the House Father was absolutely independent. His actions, even those which would now come under the cognizance of the State, were subject to no control. But outside the charmed circle, his position was very different. In every single act he was bound to care, and to care very much, for other men. He was no longer at liberty to do what he liked with his own. On the contrary, it was his duty to do with it what the custom of the community required. He held certain rights in the arable mark, that is, in the agricultural reserve of the community; but both these rights and the modes of his enjoyment of them were strictly defined.

II. Out of the public land, a certain portion was set apart for purposes of cultivation. This portion was divided, somewhat like shares in a company, among all the households of the village. The size of these reserves, and of the allotments into which they were divided,

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among the Essays published by the Cobden Club on *Systems of land tenure in various countries*.

I. The original Teutonic community is an association of freemen, a 'Gemeinde,' a commonalty or commons (not common people, in contradistinction to uncommon people, that is, a privileged class, but a body of men having property in common); amongst whom the right of private property in land is correlative to the public duty of military service and participation in the judicial and other political acts of the community. These public duties are of a comparatively simple kind; the agricultural relations of the community, on the other hand, are of a comparatively complicated kind.

II. The district or mark (*i. e.*, the geographical area marked out and appropriated by the community) consists of three distinct parts; first, the *common mark* (the Foleland of the Anglo-Saxon), owned jointly by the community; secondly, the *arable mark* (Fieldmark), cut out of the common mark, and apportioned in equal lots to the members of the community (the Anglo-Saxon Boc land); and lastly, the *mark of the township* (Dorf, thorp, villa), also divided into equal lots, and individually appropriated.

III. The individual marksman, therefore, stands in a threefold relation to the land *occupied by the Gemeinde*.

(a). He is a joint proprietor of the COMMON land; he is an allottee in the ARABLE MARK; and he is a householder in the township. In the first case he owns *de indiviso*, and his rights are strictly controlled by those of his co-marksmen. His cattle grazes on the common pasture, under the charge of the common herdsman; he hews wood in the forest, under the control of a communal officer.

(b). In the ARABLE MARK he has a distinct inheritance, and can call a certain number of square roods his own; but he must cultivate his lot in concert with his associates; and the community at large determines on the mode of its cultivation. The whole mark is divided into as many parts or fields ("Fluren" "Campi,") as the rotation of crops and the alternation between fallow and plough requires; usually into three such "commonable" fields, each field lying fallow once in three years, the community having rights of pasturage on the fallow as well as on the stubbles of the land under the plough.

It is these common rights of pasturage on the *arable mark* which it is of importance to note, for it was from these rights, and not from the right of pasturage on the *common pasture*, that mediæval agriculture derived its distinctive character. The obligatory cultivation on the "Three Field system," the *common temporary* enclosure of the commonable field (not of the individual parcel) whilst the crop is growing, the removal of that enclosure after harvest, the prohibition against *permanent* and *individual* enclosures, are all of them results which flowed from the common right of pasture on the *fallow* and *stubbles*.

4. Leaving the village commune for a while, we may consider the feudal system in (1), its tenures, (2), the property which became the subject of the tenures.

I. The essential constituent and distinguishing characteristic of the species of estate called a feud or a fief, was from the first, and always

continued to be, that it was not an estate of absolute and independent ownership. The property, or *dominium directum*, as it was called, remained in the grantor of the estate. The person to whom it was granted did not become its owner, but only its tenant or holder. There is no direct proof that fiefs were originally resumable at pleasure; but it is not denied that the fief was at one time revocable, at least on the death of the grantee. In receiving it, therefore, he had received not an absolute gift, but only a loan, or, at most, an estate for his own life. * *

II. Palgrave doubts if the word *Feudum* ever existed. The true word seems to be *Fevdum* (not distinguishable from *Feudum* in old writing), or *festum*. *Fiev*, or *Fief* (Latinised into *Fevodium*, which some contracted into *Feudum*, and others, by omitting the *v*, into *Feodum*), he conceives to be *Fitef*, or *Phitef*, and that again to be a colloquial abbreviation of *Emphyteusis* (pronounced *Emphytefsis*), a well known term of the Roman imperial law for an estate granted to be held, not absolutely, but with the ownership still in the grantor, and the usufruct only in the hands of the grantee. It is certain that emphyteusis was used in the middle ages as synonymous with *precaria* (an estate held on a precarious or uncertain tenure); that *precaria*, and also *prestila* or *prestarla* (literally loans), were the same with *beneficia*; and that *beneficia* under the emperors were the same, or near the same, as fiefs (see these positions established in Palgrave. *ut supra*. civ—cvi.).

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Para. 4, contd.

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Para. 1, contd.

loan of land, the profits of which were left to him as entirely as if he had obtained the ownership of the land, but his precarious and revocable tenure of which, at the same time, kept him bound to his lord in the same dependence as before.

IV. Here, then, we have the union of the fief and vassalage—two things which remained intimately and inseparably combined so long as the feudal system existed. Nevertheless, they would appear, as we have seen, to have been originally quite distinct, and merely to have been thrown into combination by circumstances. At first, it is probable that as there were vassals who were not feudatories, so there were feudatories who were not vassals. But very soon, when the advantage of the association of the two characters came to be perceived, it would be established as essential to the completeness of each. Every vassal would receive a fief, and every person to whom a fief was granted would become a vassal. Thus a vassal and the holder of a fief would come to signify, as they eventually did, one and the same thing.

V. Fiefs, as already intimated, are generally supposed to have been at first entirely precarious, that is to say, resumable at any time at the pleasure of the grantor. But if this state of things ever existed, it probably did not last long. Even from the first it is most probable that many fiefs were granted for a certain term of years, or for life. And in those of all kinds a substitute for the original precariousness of the tenure was soon found, which, while it equally secured the rights and interests of the lord, was much more honourable and in every way more advantageous to the vassal. This was the method of attaching him by certain oaths and solemn forms, which, besides their force in a religious point of view, were so contrived as to appeal also to men's moral feelings, and which, therefore, it was accounted not only impious but infamous to violate. The relation binding the vassal to his lord was made to wear all the appearance of a mutual interchange of benefits, of bounty and protection on the one hand, of gratitude and service due on the other; and so strongly did this view of the matter take possession of men's minds, that in the feudal ages even the ties of natural relationship were looked upon as of inferior obligation to the artificial bond of vassalage.

VI. As soon as the position of the vassal had thus been made stable and secure, various changes would gradually introduce themselves. The vassal would begin to have his fixed rights as well as his lord, the oath which he had taken measuring and determining both these rights and his duties. The relation between the two parties would cease to be one wholly of power and dominion on the one hand, and of mere obligation and dependence on the other. If the vassal performed that which he had sworn, nothing more would be required of him. Any attempt of his lord to force him to do more would be considered as an injustice. These connections would now assume the appearance of a mutual compact, imposing corresponding obligations upon both, and making protection as much a duty in the lord, as gratitude and service in the vassal.

VII. Other important changes would follow this fundamental change, or would take place while it was advancing to completion. After the fief had come to be generally held for life, the next step would be for the eldest son usually to succeed his father. His right so to succeed would next be established by usage. At a later stage fiefs became

descendible in the collateral as well as in the direct line. At a still later, they became inheritable by females as well as by males. There is much difference of opinion, however, as to the dates at which these several changes took place. * *

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ALLODIAL
LANDS.

Para. 5.

VIII.—SUB-INFEUDATION.

Originally fiefs were granted only by sovereign princes, but after estates of this description, by acquiring the hereditary quality, came to be considered as property to all practical intents and purposes, these holders proceeded, on the strength of their completeness of possession, themselves to assume the character and to exercise the rights of lords, by the practice of what was called sub-infeudation, that is the alienation of portions of their fiefs to other parties, who, thereupon, were placed in the same or a similar relation to them as that in which they stood to the prince. The vassal of the prince became the lord over other vassals; in this latter capacity he was called a *mesne* (that is, an intermediate) lord; he was a lord and a vassal at the same time. In the same manner, the vassal of a *mesne* lord might become also the lord of other *arrière* vassals, as those vassals that held of a *mesne* lord were designated. This process sometimes produced curious results; for a lord might in this way actually become the vassal of his own vassal, and a vassal a lord over his own lord.

5. These feudal tenures attached in the first instance to waste lands, or to benefices granted by the king, in which there were no private rights of property; eventually, however, lands held as *allodia* in full and entire ownership were merged into the feudal system. Allodial lands.

I. *Allo'dium* or *Alo'dium*, property held in absolute dominion, without rendering any service, rent, fealty, or other consideration whatsoever to a superior. It is opposed to *Feodum* or *Fief*, which means property the use of which is bestowed by the proprietor upon another, on condition that the person to whom the gift is made shall perform certain services to the giver, upon failure of which, or upon the determination of the period to which the gift was confined, the property reverts to the original possessor. Ibid.

II. When the barbarian tribes from the northern parts of Europe over-ran the Western Roman Empire in the fifth and sixth centuries, they made a partition of the conquered provinces between themselves and the former possessors. The lands which were thus acquired by the Franks, the conquerors of Gaul, were termed *allodial*. These were subject to no burden except that of military service, the neglect of which was punished with a fine (called *Heribannum*) proportioned to the wealth of the delinquent. They passed to all the children equally, or, in default of children, to the next of kin of the last proprietor. Of these *allodial* possessions there was a peculiar species denominated *Salic*, from which females were excluded.

III. Besides the lands distributed among the nation of the Franks, others termed *fiscal* land (from *Fiscus*, a word which among the Romans

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Para. 5, contd.

originally signified the property which belonged to the emperor as emperor) were set apart to form a fund which might support the dignity of the king, and supply him with the means of rewarding merit and encouraging valour. These, under the name of *benefices* (beneficia) were granted to favoured subjects, upon the condition, either expressed or implied, of the grantees rendering to the king personal service in the field. It has been supposed by some writers that these benefices were originally resumable at pleasure, that they were subsequently granted for life, and finally became hereditary. But there is no satisfactory proof of the first stage in this progress. (Hallam, *Middle Ages*, vol. 1, chap. 2, 8th edition.)

IV. From the end of the fifth to the end of the eighth century, the allodial tenures prevailed in France. But there were so many advantages attending the beneficiary tenure, that even in the eighth century it appears to have gained ground considerably. The composition for homicide, the test of rank among the barbarian nations of the north of Europe, was, in the case of a king's vassal, treble the amount of what it was in the case of an ordinary free-born Frank. A contumacious resistance on the part of the former to the process of justice in the King's Courts, was passed over in silence; while the latter, for the same offence, was punished with confiscation of goods. The latter also was condemned to undergo the ordeal of boiling water for the least crimes; the former, for murder only. A vassal of the king was not obliged to give evidence against his fellow-vassal in the King's Courts. Moreover, instead of paying a fine like the free allodialist, for neglect of military service, he had only to abstain from flesh and wine for as many days as he had failed in attendance upon the army.

V. The allodial proprietors, wishing to acquire the important privileges of king's vassals without losing their domains, invented the practice of surrendering them to the king in order to receive them back again for themselves and their heirs upon the feudal conditions, that is, as benefices.

6. In other places and in earlier times allodial proprietors were forced, by the insecurity of property, to subject themselves to the nearest feudal lords.

Every district was exposed to continual hostilities; sometimes from a foreign enemy, more often from the owners of castles and fastnesses, which, in the tenth century, under pretence of resisting the Normans and Hungarians, served the purposes of private war. Against such a system of rapine the military compact of lord and vassal was the only effectual shield; its essence was the reciprocity of service and protection. But an insulated allodialist had no support. Without law to redress his injuries, without the royal power to support his right, he had no course left but to compromise with oppression, and subject himself, in return for protection, to a feudal lord. This was usually called *commendation*, which created a personal relation between lord and vassal, closely resembling that of patron and client in the Roman republic.

7. Slightly varying the above account, to adapt it to France, the following may be quoted from Guizot's *History of Civilization in France*.

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Rise of Feudalism.

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through the interior of Europe; * * everywhere little societies, little states, cut, so to speak, to the measure of the ideas and the wisdom of man, formed themselves. Between these societies was generally introduced the bond of which the customs of barbarism contained the form,—the bond of a confederation which did not annihilate individual independence. On the one hand, every considerable person established himself in his domains, alone with his family and servitors; on the other hand, a certain hierarchy of services and rights became established between these warlike proprietors scattered over the land. What was this? The feudal system rising definitively from the bosom of barbarism.

8. The principle of sovereignty which had been concentrated in the Roman Empire was locally distributed by feudalism among the numerous fiefs.

Standard Liby.
Cyclopedia.

I. The grant of land as a fief, especially when it was a grant from the suzerain or supreme lord, whether called king or duke, or any other name, was, sometimes at least, accompanied with an express grant of jurisdiction. Thus every great tenant exercised a jurisdiction, civil and criminal, over his immediate tenants; he held courts and administered the laws within his lordship like a sovereign prince. The formation of MANORS in this country (England) appears to have been consequent upon the establishment of feudalism. The existence of Manor-courts, and so many small jurisdictions within the kingdom, is one of the most permanent features of that polity which the Normans stamped upon this country.

II.—MANOR.

A manor is commonly said to consist of demesnes and services, which have been called the “material causes;” but other things may also be members and parcel of a manor.

(a). The demesnes are those lands within the manor of which the lord is seised, *i.e.*, of which he has the freehold, whether they are in his own occupation or in that of his tenants-at-will or his tenants for years. The tenants-at-will have either a common law estate, holding at the joint will of the lessor and of the lessee, or a customary estate, holding at the will of the lord, according to the custom of the manor. The tenancy for years of lands within a manor is, in modern times, usually a common law estate.

(b). The services of a manor are the rents and other services due from free-hold tenants holding of the manor. These services are annexed or appendant to the seignior over the lands holden by such freehold tenants. The lands holden by the free-holders of the manor are holden of the manor, but are not *within*, or *parcel of*, the manor, though within the lord's fee or manorial seignior. Copyholds, being part of the demesnes, are not held of the manor, but are within and parcel of the manor. * *

(c). It is a distinguishing feature of the feudal system to make civil jurisdiction necessarily, and criminal jurisdiction ordinarily, co-extensive with tenure; and accordingly there is inseparably incident to every manor a court-baron, being a court in which the freeholders of the

manor are the sole judges, but in which the lord, by himself, or more commonly by his steward, presides.

III. (a). Under the feudal system, aids were certain claims of the lord upon the vassal, which were not so directly connected with the tenure of land as relief, fines, and escheats. The nature of these claims, called in the Latin of the age *Auxilia*, seems to be indicated by the term; they were originally rather extraordinary grants or contributions, than demands due according to the strict feudal system, though they were certainly founded on the relation of lord and vassal. These aids varied according to local custom, and became in course of time oppressive exactions; * * for by *Magna Charta* it was provided that the king should take no aids, except the three following, without the consent of Parliament and that the inferior lords should not take any other aids.

(b). The three kinds of aids above mentioned require a more particular notice, as this contribution of the vassal to the lord forms a striking feature in the feudal system of England—

(1). When the lord made his eldest son a knight;—this ceremony occasioned considerable expenses, and entitled the lord to call upon his tenant for extraordinary assistance.

(2). When the lord gave his eldest daughter in marriage, he had her portion to provide, and was entitled to claim a contribution from his tenants for this purpose. The amount of these two kinds of aid was limited to a certain sum by the Statute of Westminster, 1, 3 ed., 1, C. 36.

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(6). The life of the possessors of fiefs was 'passed upon the high roads in adventures. * * Can it be supposed that the crusades would be possible among a people who had not been accustomed, brought up from childhood, to this wandering adventurous life? In the twelfth century, the crusades were not nearly so singular as they appear to be to us. The life of the possessors of fiefs, with the exception of the pious motive, was an incursion or continual crusade in their own country. They here went farther, and from other causes; that is, the great difference. For the rest they did not leave their habits; they did not essentially change their mode of life.

II.—MR. HALLAM.

The peace and good order of society were not promoted by this system. Though private wars did not originate in the feudal customs, it is impossible to doubt that they were perpetuated by so convenient an institution, which, indeed, owed its universal establishment to no other cause. And as predominant habits of warfare are totally irreconcilable with those of industry, not merely by the immediate works of destruction which render its efforts unavailing, but through that contempt of peaceful occupations which they produce, the feudal system must have been intrinsically adverse to the accumulation of wealth, and the improvement of those arts which mitigate the evils or abridge the labours of mankind.

10. The primitive state of property in land in the village commune, and that brought about by the feudal system, are thus described by Sir Henry Maine in his *Village Communities*—

I. The student of legal antiquities, who has once convinced himself that the soil of the greatest part of Europe was formerly owned and tilled by proprietary groups, of substantially the same character and composition as those which are still found in the only parts of Asia which are open to sustained and careful observation, has his interest immediately drawn to what, in truth, is the great problem of legal history. This is the question of the process by which the primitive mode of enjoyment was converted into the agrarian system, out of which immediately grew the land-law prevailing in all Western Continental Europe before the first French Revolution, and from which is demonstrably descended our own existing real-property law. For this newer system no name has come into general use except Feudalism, a word which has the defect of calling attention to one set only of its characteristic incidents. * *

II. There is no question that the benefices either began or hastened the changes which led ultimately to feudalism. Yet, I think that nobody whose mind has dwelt on the explanation has brought himself to regard it as complete. It does not tell us how the benefices came to have so extraordinary a historical fortune. It does not account for the early, if partial, feudalisation of countries like Germany and England, where the cultivated soil was in the hands of free and fully organised communities, and was not, like the land of Italy or Gaul, at the disposal

of a conquering king, where the royal or national grants resembling the benefices were probably made out of waste land, and where the influence of Roman law was feebly felt, or not at all. * *

III. If we begin with modern English real-property law, and, by help of its records and of the statutes affecting it, trace its history backwards, we come upon a period at which the soil of England was occupied and tilled by separate proprietary societies. Each of these societies is, or bears the marks of having been, a compact and organically complete assemblage of men, occupying a definite area of land. Thus far it resembles the old cultivating communities, but it differs from them in being held together by a variety of subordinate relations to a feudal chief, single or corporate, the lord.

IV. I will call the new group the Manorial group; and though my words must not be taken as strictly correct, I will say that a group of tenants, autocratically organized and governed, has succeeded a group of households of which the organization and government were democratic. The new group, as known to our law, is often in a state of dissolution, but where it is perfect, it consists of a number of persons holding land of the lord by free tenures, and of a number of persons holding land of the lord by tenures capable of being shown to have been in their origin servile, the authority of the lord being exercised over both classes, although in different ways, through the agency of a peculiar tribunal, the Court Baron.

V. The lands held by the first description of tenants (free-hold) are technically known as tenemental lands; those held by the second class constitute the Lord's Domain. Both kinds of land are essential to the completeness of the Manorial group. If there are not tenemental lands to supply a certain minimum number of free tenants to attend the Court Baron, and, according to the legal theory, to sit with the lord as its judges, the Court Baron can no longer in strictness be held; if it be continued under such circumstances, as it often was in practice, it can only be held as a customary Manorial Court, sitting for the assessment and receipt of customary dues from the tenants of the Domain. On the other hand, if there be no Domain, or if it be parted with, the authority of the lord over the free tenants is no longer Manorial; it becomes a Seignior in gross, or mere Lordship.

VI. Since much of the public waste land of our country is known to have passed by national or royal grant to individuals or corporations, who, in all probability, brought it extensively under cultivation from the first by servile labour, it cannot be supposed that each of the Manorial groups takes the place of the village group, which at some time or other consisted of free allodial proprietors. Still, we may accept the belief of the best authorities that over a great part of England there has been a true succession of one group to the other.

VII. Comparing, then, the two, let us ask what are the specific changes which have taken place. The first, and far the most important of all, is that, in England, as everywhere in Western Europe, the waste or common land of the community has become the lord's waste. It is still ancillary to the tenemental lands; the free tenants of the lord whom we may provisionally take to represent the freemen of the village community retain all these ascertained rights of pasture and gathering

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firewood, and in some cases similar rights have been acquired by other classes; but, subject to all ascertained rights, the waste belongs, actually or potentially, to the Lord's Domain. The lord's right of approvement, affirmed by the Statute of Merton, and extended and confirmed by subsequent statutes, permits him to enclose and appropriate so much of the waste as is not wanted to satisfy other existing rights; nor can it be doubted that he largely exercises this right, reclaiming part of the waste for himself by his personal dependants, and adding to it whatever share may have belonged to him from the first in the cultivated land of the community, and colonising other portions of it with settlements of his villains, who are on their way to become copyholders. The legal theory has altogether departed from the primitive view; the waste is now the lord's waste; the commoners are for the most part assumed to have acquired their rights by sufferance of the lord, and there is a visible tendency in courts and text-writers to speak of the lord's rights not only as superior to those of the commoners, but as being in fact of greater antiquity.

VIII. When we pass from the waste to the grass lands which were intermediate between the common land and the cultivated area, we find many varieties in the degree of authority acquired by the lord. The customs of manors differ greatly on the point. Sometimes the lord encloses for his own benefit from Candlemas to Midsummer or Lammas, and the common right belongs during the rest of the year to a class of burgesses, or to the householders of a village, or to the persons inhabiting certain ancient tenements. Sometimes the lord only regulates the enclosure, and determines the time of setting up and removing the fences. Sometimes other persons enclose, and the lord has the grass when the several enjoyment comes to an end. Sometimes his right of pasture extends to the baulks of turf which separate the common arable fields; and probably there is no manorial right which in later times has been more bitterly resented than this, since it is practically fatal to the cultivation of green crops in the arable soil.

IX. Leaving the meadows, and turning to the lands under regular tillage, we cannot doubt that the freeholders of the tenemental lands correspond in the main to the free heads of households composing the old village community. The assumption has often been made, and it appears to be borne out by the facts which can be established, as to the common fields still open or comparatively enclosed. The tenure of a certain number of these fields is freehold; they are parcelled out, or may be shown to have been in the last century parcelled out, among many different owners; they are nearly always distributed into three strips, and some of them are even at this hour cultivated according to methods of tillage which are stamped by their very rudeness as coming down from a remote antiquity. They appear to be the lands of a class which has never ceased to be free, and they are divided and cultivated exactly as the arable mark of a Teutonic township can be inferred, by a large induction, to have been divided and tilled. But, on the other hand, many large tracts of intermixed land are still, or were till their recent enfranchisement, copyhold of particular manors, and some of them are held by the intermediate tenure known as customary freehold, which is confined by the legal theory to lands which once formed part of the King's Domain.

X. I have not been able to ascertain the proportion of common lands held by these bare tenures to freehold lands of the same kind, but there is no doubt that much commonable or intermixed land is found which is not freehold. Since the descent of copyhold and customary freehold tenures from the holdings of servile classes appears to be well established, the frequent occurrence of intermixed lands of this nature seems to bear out the inference suggested by Sir H. Ellis's enumeration of the conditions of men referred to in Domesday Book, that during the long process of feudalisation, some of the free villagers sank to the status, almost certainly not a uniform status, which was implied in villenage (see also Mr. Freeman's remark, "Hist. Norm. Conq.," 1, 97). But evidence supplied from other quarters, so wide apart as British India and the English settlements in North America, leads me to think that, at the time when a system of customary tillage widely prevailed, assemblages of people planted on waste land would be likely to copy the system literally; and I conjecture that parts of the great wastes undoubtedly reclaimed by the exercise of the right afterwards called the lord's "right of improvement," were settled by servile colonies modelled on the ancient Teutonic township.

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11. It appears from these extracts that the proprietary right of the village commune survived that onset of barbarism which destroyed the framework of society and shattered to pieces the Roman empire; and that it was respected by the feudalism which sprang from the free gifts of land from chiefs of successive conquering hordes to their followers. In India, the right corresponding to the freehold tenure of the European village commune is that of cultivating land at an old immutable pergunnah rate; but this right, similar to that which barbarous and feudal barons spared during the lawlessness of some centuries, the zemindars in Bengal have destroyed in less than a century.

12. Of the relations established by feudalism between lord and vassal, M. Guizot wrote—

I. The nature of man is so good and fruitful, that when a social situation endures for any length of time, a certain moral tie, sentiments of protection, benevolence, and affection, inevitably establish themselves among those who are thus approximated to one another, whatever may be the conditions of approximation. It happened thus with feudalism. No doubt, after a certain time, some moral relations, some habits of affection, became contracted between the colonists and the possessor of the fief. But this happened in spite of their relative position, and not by reason of its influence. Considered in itself, the position was radically wrong. There was nothing morally in common between the possessor of the fief and the colonists; they constituted part of his domain; they were his property; and under this name, property, were included all the rights which, in the present day, are called rights of public sovereignty, as well as the rights of private property, the right of imposing laws, of taxing, and punishing, as well as that of disposing and selling. As far

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as it is possible that such should be the case where men are in presence of men, between the lord and the cultivators of his lands there existed no rights, no guarantees, no society.

II. Hence, I conceive, the truly prodigious and invincible hatred with which the people at all times have regarded the feudal system, its recollections, its very name. It is not a case without example for men to have submitted to oppressive despotisms, and to have become accustomed to them; nay, to have willingly accepted them. Theocratic and monarchical despotisms have more than once obtained the consent, almost the affections, of the population subjected to them. But feudal despotism has always been repulsive and odious; it has oppressed the destinies, but never reigned over the souls of men. The reason is that in theocracy and monarchy power is exercised in virtue of certain words which are common to the master and to the subject; it is the representative, the minister, of another power superior to all human power; it speaks and acts in the name of the Divinity or of a general idea, and not in the name of man himself, of man alone. Feudal despotism was altogether different; it was the power of the individual over the individual; the dominion of the personal and capricious will of a man. This is, perhaps, the only tyranny of which, to his eternal honour, man will never willingly accept. Whenever, in his master, he beholds a mere man, from the moment that the will which oppresses him appears a merely human and individual will, like his own, he becomes indignant, and supports the yoke wrathfully. Such was the true and distinguishing character of feudal power; and such was also the origin of the antipathy which it has ever inspired.

When the French Revolution was sounding the knell of feudalism, Lord Cornwallis was copying it in his scheme of great zemindars, who were incapable of rendering the military service which was the foundation of feudalism.

13. The military service attached to the feudal tenure was tolerably efficient in domestic quarrels with neighbouring lords; but if the service was protracted from any cause, it was rendered not without inconvenience, whilst it was altogether unsuitable for foreign wars. The crusades weakened feudalism primarily by forcing the sale of the petty fiefs and promoting the growth of large towns; but eventually, with more fatal effect, by consolidating nationalities or kingdoms, and diverting their energies from intestine feuds to foreign wars. In consequence, the personal service of vassals was dispensed with, and standing armies were maintained which broke the diminished power of the feudal chiefs. History, however, repeats itself; the same German nation which imposed upon Europe the feudalism that required personal service from hundreds and thousands, has, in this nineteenth century, perfected a military system, which requires the personal service of more than a million of men in Germany alone.

14. It appears from this account that feudalism in its youth or earlier development was an emphatic testimony to the intense passion, in the human heart, for land, a passion which more than any thing else feeds the spirit of patriotism. Property in land would have been robbed of its value if the feudal lord had burdened it with oppressive services. The cultivation of the land remained with the actual proprietors, the lordship over whom was limited to definite services in exchange for military protection. The one enduring element in the system was the passion for land; the transitory elements were (1st) the power of the feudal lord to afford military protection, and to render other services of protection of property, and justice, which now appertain to the civil administration; 2nd, the need in the holders of land for this protection and these services from their over-lord. The binding element or medium was the limit upon the services rendered

APPENDIX XXIII.

LAND TENURES IN EUROPE AND UNITED STATES,—*contd.*

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1. In August 1869 the London Foreign Office addressed a circular to Her Majesty's Representatives abroad, requesting "the fullest information in regard to the laws and customs affecting the tenure of land in the several countries in Europe, with the view of ascertaining what points there may be in such laws and customs as could be usefully adopted in the settlement of land tenure in Ireland, which is a question of pressing importance." The replies were published in 1870 in a Parliamentary Blue Book. The following information is taken mainly from that Blue Book, and from other specified sources:—

2.—UNITED STATES OF AMERICA (*Report by Mr. F. C. Ford, dated 25th November 1869*).

I.—POPULATION.

(a). Census of 1860—31,443,321, including Southern States 9,103,332.

II.—LAND OCCUPATION.

(a). The system of land occupation in the United States of America may be generally described as by small proprietors. The proprietary class throughout the country is, moreover, rapidly on the increase, whilst that of the tenancy is diminishing, and is principally supplied by immigration. The theory and practice of the country is for every man to own land as soon as possible. The term landlord is an obnoxious one. The American people are very averse to being tenants, and are anxious to be masters of the soil. Land is so cheap that every provident man may hold land in fee.

(b). The possession of land of itself does not bestow on a man, as it does in Europe, a title to consideration; indeed, its possession in large quantities frequently re-acts prejudicially to his interests, as attaching to him a taint of aristocracy which is distasteful to the masses of the American people. Again, investment in land, except that held in cities, is not, as a rule, so profitable as many others. Railway, bank, and insurance stock and mortgage bonds, for instance, return a greater percentage for money, ranging from 6 to 20 per cent. There are, moreover, heavy taxes to be paid on land.

(c). The practice of the National Government is to lay off its unoccupied land in sections of one mile square, which are again divided into blocks, varying from 80 acres to 640 acres. In the New England States and the Middle States the farms are small. In the Western States farms are large, though in Michigan they average from 80 to 200 acres; at the same time, in the Western States, especially where unoccupied and cheaper lands are plentiful, occupancy by tenancy or otherwise is comparatively little known, except in the cities and villages where other than agricultural avocations are pursued. Prior to the abolition of slavery, land in the Southern States was extensively owned by large proprietors; but since the termination of the civil war, a marked tendency exists to the sub-division of properties. This change in the character of the tenure of land in the southern portion of the Union has been partially caused by the present relations of the employers and the employed. The owners of large plantations are unable to get them cultivated, and are consequently desirous of parting with portions of their land even at low prices. In the State of Virginia farms are found to-day varying from 10 to 250 acres; and in South Carolina as small as from 5 to 50 acres.

From the foregoing it appears that (1) tenancy is the exception, proprietorship of land is the rule, in the United States; (2) the great increase of cultivation which has provided the enormous exports of corn from the United States to England has been effected by small proprietors; (3) the large properties in the Southern States have been in course of sub-division ever since the cutting off of the supply of slave labour, after the Civil War, as if large zemindaries can hold together only so long as the cultivators are kept in a state of bondage, or in a material and moral condition no better than that of slaves.

3.—FRANCE (*Report by Mr. L. S. Sackville West, dated 19th November 1869*).

I.—POPULATION, 38,067,094. .

II.—LAND OCCUPATION.

(a). The land is chiefly occupied by small proprietors, who form the great majority throughout the country;—property is generally divided into three classes:—

	Acres.
1.—Properties averaging 600 acres, numbering about	... 50,000
2.—" of 60 acres, " "	... 2,500,000
3.—" of 6 acres, " "	... 5,000,000

With rare exceptions, all the great properties have been gradually broken up, and even the first and second classes are now fast merging into the third. To such an extent is this the case, that even at the present moment 75 per cent. of the agricultural labourers in many departments are proprietors. The parcels of land held by them are oftentimes not more than a rood in extent, intersected by other holdings, and very often separated by considerable distances. This parcelling out of the land,

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although increasing every day, is to be found prevailing more especially in the departments of the Côte d'Or, Haute Marne, and Haute Saône.

(b). The land is also occupied by tenants holding from proprietors, and by "métayers," but the tenants and métayers are in many instances small proprietors themselves, so that it may be said that small properties universally obtain. M. Chateaueux, writing in 1846, estimates the number of acres farmed by tenant farmers at 16,940,000 against 70,000,000 cultivated by proprietors and "métayers." * * Payment by share of the produce constitutes what is called the "métairie" system. In the "Code Civil" the "métayer" is called "colon partaiaire." He is a tenant who pays no rent in money, but gives to his proprietors a certain portion of the produce of the land which he farms. Formerly it was one-half. In fact it is a system by which the proprietor gives his land and the "métayer" his labour and the cultivation, for which, if either fail him, he can claim no compensation. The system is becoming less and less resorted to, and now obtains in only a few departments.

(c). It is impossible to fix an average of the number of acres which a tenant, properly speaking, farms. In many cases he will be found to be a proprietor himself, who, having amassed a certain amount of capital, undertakes to farm ("exploiter") an adjoining property. Generally speaking, the division of property naturally does not admit of large farms, except in some of the purely agricultural departments, and then they partake more of the character of experimental farms. * * It must be borne in mind that the "tenant holdings," properly speaking, bear a small proportion to other tenures, and that the tenant farmer, as before said, is oftentimes himself a proprietor. The mode of cultivation, standard of living, and employment of labour, therefore, will not be found to differ much, as a general rule, from those of peasant proprietors. The tenant farmer may be said to possess this advantage over the small proprietor (but this is by no means always the case), namely, that he is assisted by the capital of his landlord if he is an intelligent and enterprising man. The advantage of the tenant holding over the "métayer" system is universally acknowledged, and the one is gradually supplanting the other. The advantage to the soil, and to the general condition of the agriculturist from small proprietorship, has already been indicated.

(d). There are, according to M. Lavergne, 500,000 farmers, 500,000 métayers, and 2,000,000 day labourers and servants—most of them small proprietors—besides 2,000,000 of independent proprietors. He calculates that scarcely one-sixth are not proprietors. This population may be said to cultivate or live upon 500,000,000 acres of land. Its density must, however, vary to such extent, that it is impossible to draw any conclusions from it.

France, with her sound agricultural system and the general prevalence of her peasant proprietorships, was able to recover more rapidly than any other country could have done, from the disastrous economic influence of the war indemnity, and she has felt the general depression of trade less than other countries. We find that steadily there is disappearing in France the métayer tenancy; whilst in Bengal

the object of zemindars is to reduce all cultivators to the status of *koorfa ryots*, or cultivators on a *métayer* system adjusted to the zemindar's advantage.

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BELGIUM.

Para. 4.

4.—BELGIUM.

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BELGIUM.

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Belgium, according to the census of 1846, was 2,603,036 hectares.¹ The lands under cultivation amounted to 1,793,153 hectares, of which quantity 613,570 hectares were farmed by proprietors and 1,202,224 by tenants. Thus, about two-thirds of the arable lands of Belgium are cultivated by tenants. The system of under-letting not being practised to any considerable extent in Belgium, the number of sub-tenants is not comprised in the official statistics.

(c). The lands held by proprietors are thus classified in the report published by the Minister of the Interior in 1850:—

Proprietors farming—

50 acres and under	...	...	101,581	
51 acres to 1 hectare	...	...	47,726	119,310
1 hectare to 5 hectares	...	...	...	122,593
5 to 10 hectares	...	...	33,001	
10 to 25 hectares	...	...	23,506	
25 to 100 hectares	...	...	8,522	
100 and over	...	...	654	65,683
				<hr/> 337,586 <hr/>

It is observed, says the Minister in his elaborate Report, that it is in the poorer and more thinly inhabited districts that proprietors are the most apt to cultivate their own land, and, on the other hand, that the system of letting lands to tenants appears to increase notably in the neighbourhood of towns, so that in populous districts proprietors farming their own lands become comparatively rare. (Mr. Grattan.)

The bulk of the land in the hands of owners consisted in 1846 of wood lands, wastes, &c. (Mr. Wyndham).

(d). The number of tenants in Belgium, according to the Report published by the Minister of the Interior in 1850, was 234,964, of which number 145,967, or about 60 per cent., held land not exceeding half an hectare, or about $1\frac{1}{2}$ acre in extent; 66,027 persons (about 30 per cent.) held from 1 to 5 hectares, or $2\frac{1}{2}$ to $12\frac{1}{2}$ acres; and those holding over 5 hectares amounted to 22,970, or about 10 per cent.

(e). Since the French Revolution, feudal rights have ceased to exist in Belgium, and no tenure resembling our copyhold system exists. Land let without a written agreement is understood to be let for the term necessary for the tenant to gather in his crops; thus, a meadow, a vineyard, the produce or fruits of which are gathered in the term of a year, is understood to be let for a year. Arable lands are generally understood to be let according to the course in which they are cultivated, i.e., according to the rotation of crops. It is customary to manure the lands in such a manner as to obtain several crops in succession, as for example, potatoes, wheat, and oats, and the tribunals decide that when land is cultivated in this manner, a parol agreement must hold good for the term necessary for the farmer to obtain from his land the profit from the manure which he has put into it. (Mr. Wynham.)

(f). Leases when granted generally run for nine years; sometimes for twelve, fifteen, and even eighteen years. When a holding is but of small extent, and there are no buildings upon it, it is often let without written agreement, and for no specific term, and sometimes it is let

¹ 1 Hectare = 2 acres 1 rood 35 perches, or nearly $2\frac{1}{2}$ acres.

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rule, very short, nine years at most,—very seldom, indeed, for so much as eighteen years. On the other hand, yearly tenancy and tenure-at-will are also very exceptional. All who devote attention to agriculture, even the agricultural societies, though consisting almost exclusively of land-owners, admit that the leases are too short. The tenant is not encouraged to improve; and if he does make improvements, he can hardly be said to reap the benefit of them. The landowner will not grant longer leases, because they want, in the first place, to keep a hold upon their tenants; and secondly, to raise the rents when the leases expire. It may be said that throughout Belgium such increases of rent take place regularly and periodically. (M. Levelaye.)

It appears from these extracts that Belgium is essentially a country of small farms; that more than half of the farms are cultivated by the proprietors; that whilst the rest are cultivated by tenants, there are rarely any middlemen, and that, among the lands cultivated by tenants, a considerable proportion are allotments to labourers who pay rent for the lands and eke out their income from the lands by earnings in other industries or occupations.

5.—NETHERLANDS.

REPORT BY MR. S. LOCOCK, DATED 20TH DECEMBER 1869.

I. POPULATION, &c., a little over 3,500,000. The country called the Netherlands is a commercial and agricultural rather than a manufacturing country. Its sub-colonial possessions and its sea-indented coasts, its fat pastures and its light level soil, have given a direction to the energies of its inhabitants.

II.—LAND OCCUPATION.

(a). The system of land tenure in the Netherlands is of a double or rather a threefold kind. There are some lands (a) held by small proprietors, or at all events by farming proprietors; there are others (b) occupied by tenants holding from proprietors, but without the accompanying practice of sub-letting; and there are again others (c) where the system of tenure is closely allied to our own copyhold tenure. There are some districts where one system is far more prevalent than another, and there are other districts where the first system is to be found working side by side with the second in almost equal proportions.

(b). The quantity of land usually held by each proprietor farmer may be said to vary generally from 50 to 100 or 125 acres, according to the province. Of course there are many much smaller, but there are likewise others far larger. The largest proprietors of this kind are situated in Friesland, Groningen, and Zeeland, where one meets with farms of several hundred acres. The farms consist of single properties, more or less compact, and are very rarely intersected by farms belonging to other proprietors.

(c). Dairy farming is very extensive, and is carried to great perfection in the Netherlands. * * The proportion between tillage and grass lands is almost exactly that of three to four; in other words, arable land may be stated to form three-sevenths, and meadow land four-sevenths of their united area. In Groningen, Zeeland, North Brabant, and Limburg, the former predominates; while in Friesland, Drenthé, Overÿssel, and North and South Holland, the latter; in Gelderland, the two are nearly balanced.

(d). Hired labour is an absolute necessity on almost all farms, as may be gathered from their size, but it is not in my power to give any information based on statistics as to the average number of paid labourers per acre. About 100,000 farm labourers enter the Netherlands yearly in the month of May, and remain till after the harvests have been gathered in. Now, the total extent of land under cultivation in the Netherlands, exclusive of orchards and gardens, but including grass land, is 1,250,000 acres, so that this foreign labour would be equivalent to an addition on the average of one labourer to $12\frac{1}{2}$ acres.

(e). The size of farms held by tenants does not materially differ from that of farms cultivated by the persons owning them. * * The usual length of tenures varies according to district, generally being sufficient to cover the time required for one full succession of round crops; thus, in some parts it is the custom to grant three years' leases, in others five years, in others six years, and in others twelve years.

(f). The Legislature has never interfered in any way either for the purpose of promoting the creation of freeholds or tenancies by proprietors, or the granting of leases, or in any other way to increase by artificial means the number of owners or freeholders. It has generally been found that the landed proprietors have, without pressure, consulted their own interests and those of others, by never refusing to grant long leases, and even leases in perpetuity, as in Groningen, of unreclaimed lands, to those willing to go to the expense and labour of bringing them under cultivation, while the holdings already in existence are found to adapt themselves in size to the requirements and means of the tenants. As to forcible creation of freeholds, rent is low in the Netherlands, and a tenant can obtain a lease on such terms that he seldom is tempted to look on it as a grievance that its proprietorship is denied him.

6.—HANSE TOWNS (*Report by Mr. J. Ward, 5th November 1869*).

I.—HAMBURGH.

(a). POPULATION, 302,581 souls. The larger portion of the population is employed in commercial and maritime pursuits, but one-third of it depends upon manufactures; and the number of persons who derive their subsistence from the cultivation of the soil is little more than 9,000.

(b).—OCCUPATION OF LAND.

The land throughout the Hamburg territory is in the hands of small proprietors, who live in their own houses and cultivate their own soil. The size of the properties varies with the locality. There are no instances

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of farms let to tenants on lease or otherwise, with the exception of the islets on the Elbe, which are State domains, and farmed by the lessees of the state under peculiar circumstances.

HANSE TOWNS.

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II.—BREMEN.

(1). POPULATION, 109,878 souls.

(2). The whole of the land in the Bremen territory is in the possession of the cultivators of the soil, with the exception of a few isolated cases, in which leases have been granted. There are 3,229 distinct properties, of which 1,647 are under 5 morgen, 1,278 from 5 to 100 morgen, 291 from 100 to 300 morgen, and 15 above 300 morgen. One morgen is equal to 2 roods, 21 perches English measure.

III.—LUBECK.

(1). POPULATION, 49,183 souls.

(2). Land, one-half in large farms, is the property of private persons; the other half belongs to the State or to corporations, and is let on leases, in small farms, which do not exceed 30 acres.

7.—SCHLESWIG HOLSTEIN.

(a). POPULATION, 981,718 souls.

(b). OCCUPATION OF LAND:—The greater part (certainly more than half) of the lands within the Duchies belongs to noblemen and other large proprietors, who parcel them out and let them to farmers upon lease. The rest of the soil is in the hands of peasants and small proprietors who live upon and cultivate their own land.

(c). The average size of the large estates is from 4,000 to 6,000 English acres. There are, however, some larger properties. These estates are divided into farms varying in size from 100 to 1,500 acres; for instance, the estate of Quarubeek, bordering on the Schleswig Holstein Canal, the property of M. Scheller, comprises about 4,000 English acres. It is divided into the Mansion-house farm of 1,200 acres, two smaller dairy farms of 600 and 400 acres respectively, and five or six villages distributed into small farms of from 100 to 200 acres each. The whole of this land is let on lease at a rent of 13 Prussian dollars per tonne, or 39s. per English acre, inclusive of all services and demands upon the tenant. It is difficult to obtain a higher rate of rent; some farms are let rather lower, but for good land it may be taken as the present price.

(d). The farms are let on written contracts, or leases, for terms of seven, fourteen, or twenty-one years; mostly for one of the two latter terms.

8.—SAXE COBURG GOTHA.

I.—POPULATION, 169,000.

II.—OCCUPATION OF LAND.

(a). By far the greatest part is occupied by small proprietors. Generally speaking, tenants exist only on large properties belonging to the Ducal House, and where there is a Manor House, and on properties belonging to the Church and Rectories, and to towns.

(b). Sub-tenants under intermediate tenants scarcely exist.

(c). No statistical information is to be procured as regards the proportions of these several systems, but it is presumed that nine-tenths of all

landed property is in the hands of land-owners, and one-tenth in those of tenants.

(d). The smallest property belonging to one owner, and who depends on the cultivation of it as the means of existence, may be rated at 33½ English acres each. Whole properties lying together are very rare.

(e). Generally speaking, there are only tenants on large properties, as little can be gained by the lease of small farms, and a tenant seeks therefore the lease of at least 450 English acres.

(f). The duration of a tenure is from 12 to 18 years. If the tenant dies during this time, and one of the heirs is willing and capable of undertaking the tenure, he is considered to have a claim to it—at least as long as until the term is expired.

9.—PRUSSIA AND NORTH GERMAN CONFEDERATION—(*Report by Mr. Harriss Gastrell, 27th October 1869.*)

I.—POPULATION, &c.

Population before Sadowa, 19,663,524, or somewhat more than the rest of Germany. In 1867, a little over 24 millions, including 7½ millions in towns. In Prussia, 60 per cent. of the yearly production and consumption originate in the possession of land; 41 per cent. of the population live directly by agriculture, and 11 per cent. are auxilially engaged in agriculture. Prussia is rich in useful minerals, coal, iron, zinc, lead, and copper. Besides her mining industry, Prussia has a very important manufacturing industry, which has made an immense stride, especially in the last decade. But the surprising fact is patent that Prussia within fifty years has passed from the condition of an almost entirely agricultural land to that of a largely manufacturing as well as an importantly agricultural land.

II.—OCCUPATION OF LAND.

(a). The statistics relating to land in the official Agricultural Year Book for 1858 were fuller than those for later years. The distribution of properties in 1858 was as follows:—

	Under 3½ acres.	From 3½ to 20 acres.	Total.	From 20 to 200 acres.	From 200 to 400 acres.	Over 400 acres.	Total.
Rhineland ...	564,759	205,446	770,205	49,524	1,608	4,137	825,474
Westphalia ...	121,825	75,537	197,362	46,179	1,401	706	245,648
Saxony ...	105,899	66,825	172,724	41,103	1,603	1,224	216,653
Silesia ...	121,078	109,725	230,803	49,159	1,204	3,003	284,169
Total ...	913,561	457,533	1,371,094	185,965	5,816	9,069	1,571,944
Brandenburg ...	66,863	45,763	112,626	49,428	2,343	51,771	216,168
Pomerania ...	32,653	29,099	61,752	26,247	1,436	2,595	92,030
Posen ...	24,792	32,852	57,644	45,232	1,082	2,656	106,614
Prussia ...	49,212	44,581	93,793	82,961	4,451	4,137	185,342
	173,520	152,295	325,815	203,868	9,312	61,159	600,154
Grand Total ...	1,087,081	609,828	1,696,909	389,833	15,128	70,228	2,172,098

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PRUSSIA.

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(b). In 1858 the large proprietors, *i.e.*, proprietors of more than 400 acres, formed scarcely a one hundred and twentieth part of the aggregate of land-owners. It is the practice of land-owners, even of large entailed estates, to farm their land either directly under their own superintendence or indirectly by a bailiff. This is so universal that it will suffice to deduct, say, 5 per cent. from the total of large proprietors in 1858, to obtain approximately the number of large land-owners who then farmed their own land.

(c). The middle proprietors are those who hold land in quantities from 20 to 400 acres. They number 404,871, and with their families about 1,500,000. These 400,000 and the upper 600,000 of the small proprietors form the independent yeomanry and the proprietary peasantry of Prussia, but of course include some owners of privileged estates, and a few others who do not belong to the peasantry, as a class, with their families. These are computed to number nearly 4,000,000 persons, that is, more than one-fifth of the total population. They form, in all probability, the most valuable section of Prussia's population,—not the most wealthy section, but the most valuable to the nation. The team-requiring peasant farms nearly coincide with the middle properties, or farms of 20 to 200 acres. * * The limit of 20 acres is in some provinces too little to constitute a team-requiring farm, and too little to support a family decently; but in other provinces it is more than enough to do both of these things.

(d). The number of small proprietors was about 1,400,000 in 1858. Of these, a considerable number possess sufficient land to support themselves and their families. The minimum for this purpose is 7 acres, or thereabouts, in very fertile and well favoured districts, and increases, according to the decreasing local disadvantages, to 20 acres or more. If the number of peasant farms, not team-requiring, be taken for a guide, then the number of the proprietors of the above minimum may be estimated at about 600,000. It is not intended to affirm that all these 600,000 owners are able to bring up families in average comfort and without occasional straits, but that they rely entirely upon the productiveness of their agricultural labour on their land, and in average times keep poverty at a great distance, and are in a position by great thrift to increase the ease of their position. The remaining small proprietors fall mainly into the category of persons only auxiliarily occupied with agriculture. It will be borne in mind that the figures of 600,000 are only approximative, and have been stated in knowledge of the difficulties of the subject, which have been previously pointed out. That they are not very inaccurate, can be inferred from the following considerations: the 400,000 middle proprietors, of which the accuracy of the return is not doubted, form, together with these 600,000, a total of 1,000,000, which corresponds, after certain allowances on both sides, with the return of 1867 of over 1,000,000 owners, tenants, &c., engaged in agriculture.

(e). With regard to the remaining 800,000, who are day-labourers, or who have another industry, either as their chief occupation or as auxiliary to their agriculture, little need be said. They form an important class of land-owning agricultural labourers, contain also many artisans, and probably include the small industrial people of the villages. At any rate, these 800,000, and the 350,000 who possess houses without land, make

together 1,150,000 persons, who sub-divide into these three chief categories.

(f). The following table (not reproduced here) sets forth the facts that in the provinces of Prussia and Saxony, the so-called rustie properties, which are, in fact, the property of the yeomanry and peasantry, occupy a half of the province, and the large non-peasant private properties have scarcely one-fourth or one-sixth of it; and that the average of the former throughout the six eastern provinces is as great as the acreage of the latter.

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PRUSSIA.

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III.—SILESIA—(*Report by Consul White, 22nd December 1869*).

(a). But there exists in Silesia a third mode of letting tilled or grass land, detached from an estate or from a farm, and unenclosed, without either stock or buildings of any description; in fact, the bare land, at so much an acre, for three, but generally for six years. These kinds of leases are sometimes made direct with the tenants, but generally through the intervention of a middleman, who sublets the land leased, by dividing it into small lots or patches of a few morgen, or even less. This middleman of course charges a percentage for his trouble and for his responsibility for regular payment of rent; this addition to the rent coming, of course, out of the pockets of those who cultivate the soil thus let.

(b). This system of letting bare fields is known in German by the name of "Ackerpacht," and prevails in almost every part of Silesia, but particularly in those districts where the small holdings predominate, or where there is a class of cottiers or other labourers chiefly dependant for a livelihood on wages.

(c). It appears that the rent of land which may be obtained in this way is much higher than any that could be obtained in any other way, and that many landlords avail themselves of the advantages offered them by the prevailing desire of the inhabitants of towns, or of industrial districts, in devoting a portion of their fields to that purpose.

(d). It appears that there are in the province of Silesia, in the rural portions of it alone, 59,811 owners of houses, without any land attached to them or cottiers, besides the existence of many others similarly situated (21,445) in the towns. All these people are but too glad to be able to do some farming on a small scale; and it is this disposition on their part, and their wish to grow their own potatoes and vegetables, which has produced this sort of arrangement, the only possible one to a certain class; and I have heard no complaints made on the score of the high rent which it presupposes.

(e). When it is considered that a large tract of country is owned by peasants in Silesia (7,500,000 of morgen, out of a total area of 15,781,000), this is certainly the last place where one expects to meet with the letting and sub-letting of small patches of land, and with the existence of middle-men, even though they be but few; and this state of things reminds one somewhat of Ireland.

(f). It must, however, be borne in mind that not only is this arrangement felt to be highly acceptable to the parties chiefly interested, but likewise that these parties either hold already some land of their own as freeholders, or at least a cottage, and are thus at least partially inde-

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pendent; and that, moreover, it is for their benefit that they are desirous of extending their farming, and are disposed for that purpose to offer the payment of rent at a rate higher than would be likely to be agreed to by any other tenant willing to lease the estate with all the charges, risks, and repairs, which altered the farming of an estate, with its buildings, stock, and with the necessity of being provided with capital.

10.—WURTEMBERG.

I.—POPULATION.

According to census of 1867, the population was 1,899,906 inhabitants. Over 4 millions acres are cultivated, or 65 per cent. of the whole amount, while the forests, one of the principal sources of wealth, extend over an area of nearly 2 million acres, or nearly 30 per cent. of the whole. Agriculture is the principal occupation of the mass of the population, and cattle-breeding on a moderate scale. There are numerous small manufactories of linen, cotton, hosiery, woollen cloths, cutlery, tobacco, glass-toys, &c. * * As a rule, the impulse given by the State to all industrial undertakings has been carried too far for the requirements of the population, and Government assistance has been afforded to a mass of industrial occupations (as well as to provide technical instruction on the same) which do not in many cases repay the outlay invested on them.

II.—LAND OCCUPATION.

(a). The system of land occupation in Wurtemberg is now almost entirely by small proprietors, by whom nearly the whole land is held. The few tenant farmers in the country are upon the State or Royal properties, or those belonging to the wealthier of the nobility or mediatised Princes, but farms held by such tenants are seldom less than 200 acres in extent, and, as is subsequently mentioned, are almost always men of a very superior class, who practise high farming and have undergone a practical and theoretical agricultural education at the Royal Agricultural College at Whenheim.

(b). The number of landed proprietors in 1857 was about 330,000. The area of the whole country being about 6,000,000 acres, and of that, about 4,00,000 acres being devoted to agriculture, each property would on an average consist of about 12 acres. It must be borne in mind, however, that of the 330,000 proprietors, only 150,000 are actually independent farmers; while 180,000 are, though actually proprietors of land, not really farmers, but, though cultivating their small patches of land, gain their livelihood as day-labourers, or else by industrial pursuits.

(c). The 150,000 farmers may be divided as follows:—

Farmers.	Possessing farms of	Average size of property.
14,000	More than 50 acres	93 acres.
15,000	From 30 to 50 "	37 "
55,000	" 10 to 30 "	18 to 19 acres.
50,000	" 5 to 10 "	7 or 8 "
16,000	About 5 acres or less	3 to 4 "

The quality of the soil, and the nature of the farming, as well as the situation of the farm, may considerably alter its relative importance.

(d). The smallest quantity of land held by tenant farmers would, as a rule, be from 50 to 100 acres; these farms are, however, for the greatest part from 100 to 250 or even 500 acres in extent. But there are very few tenants in Wurtemberg, and those chiefly on land belonging to the State, the Royal Family, and the great landed proprietors among the nobility, in so far as such land is not occupied by forests, which, without exception, are never let.

(e). The whole of the State property is occupied by tenants, to whom it is let, in general, on long leases (as a rule, eighteen years) by public auction, the administration not, however, binding itself to accept the highest bid. Sub-tenancies are not permitted, inasmuch as the State attaches the greatest importance to the character, agricultural education, and antecedents of the tenants who have, in the case of the larger farms, to deposit a security for the due fulfilment of the conditions of the lease as to artificial manuring, mode of cultivation, amount of live-stock, &c. The properties of the mediatised Princes, and of the large land-owners, are administered on the same system; though, in all these cases, isolated or outlying pieces of land are exceptionally let out to small proprietors in the neighbourhood, but on short leases.

11.—BAVARIA—(*Report by Mr. H. P. Fenton, 20th January 1870*).

I.—POPULATION, 3rd December 1867, 4,824,421 persons.

II.—OCCUPATION OF LAND.

(a). The system under which land is held in Bavaria is almost universally that of occupation by the proprietor himself, the great mass of the occupiers being small or "peasant" proprietors. Occupation by tenants or sub-tenants is a rare exception to the general rule. Practically, land occupation is in this country almost synonymous with ownership of land.

(b). As a rough estimate by the Secretary General of the Agricultural Society of Bavaria, the total number of land-owners of all classes in Bavaria may be assumed to be somewhere about 500,000, of which total only about 100 are proprietors of estates, or of an aggregate of land (within the Bavarian territory) exceeding 1,000 Bavarian acres in extent.

(c). The holdings of the peasant proprietors vary greatly in point of size in different districts; but, as a general rule, it may be assumed that these holdings are largest in the provinces of Upper and Lower Bavaria, Swabia, and the Upper Pfalz. They are less considerable in the three Franconian Provinces, and smallest of all in the Rhenish Palatinate. From 40 to 50 acres may be considered as a minimum (except in the Palatinate, where the average would be much lower), and about 200 Bavarian acres as the maximum extent of a peasant property. There are some few proprietors of this class who own as much as from 300 to 400 Bavarian acres, but they are quite exceptions to the general rule.

(d). This estimate of the usual size of the holdings is, I should however state, only intended to apply to that class of peasant proprietors who may be considered as agriculturists and nothing else, that is to say, who occupy themselves with, and make their living exclusively out

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of the profits derived from, the cultivation of the land they possess; and not to that numerous class who, whilst owning a small plot of ground which they themselves cultivate, derive their chief support from some trade or profession carried on in their village, or from their calling as day-labourers.

(e). It would further appear that, generally speaking, the lands constituting the peasant properties do not lie altogether, but are divided into several plots intersected by other properties of the same description. Indeed, in some districts much inconvenience has frequently been found to arise from the extent to which the small properties are split up into portions of land lying separate one from the other.

(f). It may be laid down as a very general rule that small proprietors of land in Bavaria do not live on their properties, but reside in villages or small groups of dwellings.

12.—AUSTRIA—*Report by Mr. Lytton, now Lord Lytton,* *15th January 1870.*

I.—LAND OCCUPATION.

(a). It was not till the year 1848 that the feudal system was completely abolished throughout the Austrian empire. Previous to that period the Austrian peasantry were serfs. They were legally subject to forced labour, and it was by the forced labour of peasants that the estates of the great proprietors (the feudal seigneurs) were cultivated.

(b). In return for this forced labour, however, a certain portion of land was allotted by his feudals eigneur to the peasant serf, and cultivated by the latter exclusively on his own behalf and to his own profit. Under this régime, therefore, the peasant, although a serf, was also a proprietor. Subject to certain duties payable on transfer, &c., to his feudal superior, the serf, or bondsman, was legal owner of the land he cultivated. He could sell it; he could transfer or bequeath it by testamentary disposition. Practically, all such transactions were impeded by the difficulty, expense, and inconvenience of them; but legally, the right of transfer, mortgage, and bequeathal, invested the bondsman with a proprietary character.

(c). The land laws of 1848-49 abolished the feudal system in Austria, with all its privileges, exemptions, and monopolies. The Austrian peasant was thereby converted from a peasant serf into a peasant proprietor, that is to say, the conditions of forced service and feudal impost, under which he previously held the land allotted to him, were then removed, and he was invested by the State with the free and unconditional ownership of it. * *

(d). The laws of 1848-49 created, it is true, an entirely new class of peasant proprietors, and that class is now, on the whole, a thriving one. But those laws left intact the old class of great proprietors, whose properties are at this day as large as (and much better cultivated and more remunerative than) they were previous to 1848. The legislation of 1848 in Austria did not turn tenant-farmers into proprietors, for the bondsmen whom it emancipated already were proprietors. It simply converted feudal proprietorship into free proprietorship. It did not deprive the great proprietors of their properties; it only deprived them of certain feudal rights over the property of others.

(e). (1). In the Alpine districts of Austria (the Tyrol, for instance, Salzburg, Carinthia, a great part of Styria, and the mountainous parts of Upper and Lower Austria) the average size of peasant properties is from 30 to 40 acres; and in some parts of the country, where the woods are not State property, many peasant proprietors own as much as from 1,500 to 2,000 acres a piece, about 1,000 acres of all such properties being entirely wood land.

(2). In the mountainous districts, where intercommunication is difficult, these small properties are generally held together. In the low land country they are often intersected by other estates, or held in separate lots.

(f). (1). In those provinces where agriculture is most scientific and most productive, *viz.*, Bohemia, Moravia and Silesia, it is practised on a large scale; and the greater part of the soil is in the hands of the great proprietors, who, from time immemorial, have possessed estates of wide extent. Each of these great domains may be reckoned, on the average, at not less than 10,000 acres of arable land, and from 6,000 to 10,000 acres of woodland. The area of many of them is even as much as 60,000 acres. They are cultivated with great care and skill on the most approved methods. About one-third of the whole land of Bohemia is absorbed by these large estates.

(2). The petty estates belonging to peasant proprietors form but a very small proportion of it. The average extent of such estates is from 15 to 50 acres. But a very large number of the Bohemian peasantry possess only a small patch of garden ground; and, as the produce of it is insufficient to support them, this class of the peasantry hire themselves out as agricultural labourers to the larger proprietors. The proportion of the larger properties of the Bohemian peasantry to these small ones is as one to three.

(g). In Upper Austria (exclusive of the mountainous districts above mentioned) small proprietors are the predominant class. The average size of a peasant property in the low land country of Upper Austria is from 40 to 60 acres. But many of these properties are not less than from 200 to 300 acres in extent.

(h). In Lower Austria (exclusive of the mountainous districts above mentioned) the state of agriculture and the distribution of landed property are similar to those of Bohemia and Moravia. Here large properties prevail, and form about three-tenths of the whole productive soil of the province, with a total area of 1,009,816 acres.

(i). In the lowland districts of Styria and Carniola, the land is chiefly in the hands of small proprietors. In the last named province especially, the dispersion of property is very great. This fact is chiefly attributable to the conquest of the province by Napoleon I. As part of the kingdom of Illyria, Carniola was thereby subjected to the French Code, which abolished all previously-existing limitations of the right of division and descent,—limitations which were not abolished in the other Austrian provinces until last year.

(k). In Galicia, three-fifths of the whole productive soil of the province is cultivated by large proprietors, whose estates vary in extent from 1,000 to 20,000 acres. A property of 20 acres is in that province considered sufficient to maintain a peasant family. Some peasants,

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the labour of the owner and his family to suffice for their cultivation, hired labourers are employed.

(g). The agricultural labourers are divided into two distinct classes, the "bifolehi" or "boori" (ploughmen or permanent labourers), who are also called "famigli" and "schiavandari" in some districts, and the "braccianti" (day labourers or casual labourers).

(h). The permanent labourers are hired by the year, but they often remain a long time on the same property. They are lodged, with their families, at the farm, not, however, too commodiously, and are paid partly in money and partly in kind. The system existing—and which may not be unworthy of attention—is to interest the labourer in the results of his work by confiding to him a portion of land for cultivation, of which he shares the produce.

(i). The quantity of land held by tenants under landlords in Piedmont varies from the smallest plots, in some few cases, over 1,000 hectares.

(k). The tenancies may be divided into two distinct classes; land held on the "metayer" system, and simple tenancies for a money rent.

(1). The "metayers" are a species of farmers sharing with the proprietor half the produce of the soil. Each "metayer" holding is large enough to give employment to one family of peasants. The house, which always stands on the property, is kept in repair by the proprietor, and the "metayer," in general, pays no rent. The farmer must possess from two to four oxen, according to the extent of the ground he has to cultivate, ploughs, harrows, and all the requisite agricultural implements. If there are vines, the proprietor is obliged to supply the props. The "metayer" farms are generally held by the year, six months' notice to quit being required on either side. In some districts, however, they are held for nine years, though terminable at the end of each triennial period on the usual six months' notice being given.

(2). The regular tenancies for a rent in money are usually held for nine years; sometimes for twelve, fifteen, or even eighteen years, in the case of the larger estates. Leases also run for three and six years. Estates belonging to charitable institutions are never let for longer than a nine years' lease, which is often terminable at the end of each triennial period.

(l). The rent of the "metayer" farms is paid by sharing the produce of the soil with the proprietor, except for the meadow lands, for which a rent is paid, unless, indeed, the first crop of hay, called "maggrengo," is made over to the proprietor. For the other tenancies, the rent is always paid in a fixed sum of money, to which generally certain appendices are annexed, as a sack of rice or wheat, or Indian corn, the carriage of produce or materials, if required, &c.

15.—ITALY, LOMBARDY (*by Consul Colnaghi*).

(a). The characteristics of the different provinces, the methods of cultivation, and the systems of tenancies, vary according to their position, the degree of fertility, and nature of the soil, and the capabilities for irrigation. For facility of description, however, the whole territory may not inconveniently be divided into three great agricultural zones marked out by nature.

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tors of communal pastures and woods, having domicile in a certain commune, owners of a small freehold, lessees of a little meadow, and cultivating a neighbour's land on the "metayer" system.

(3). The second zone is the seat both of medium and small properties. Here the proportion of proprietors to the total population may be taken as 1 to 13. The most important estates (now that the church property has been taken over for sale by the Government) are in the hands of hospitals and other charitable institutions.

(4). The large estates are to be found in the irrigated plains of Lower Lombardy, though small properties are not uncommon in the less or non-irrigated portion of the territory. The proportion of proprietors to the total population is as 1 to 20, with a tendency to increase the size of the estates.

(c). The small mountain free-holds are always cultivated by the proprietors themselves; an owner alone would give the loving labour requisite to render the rocky mountain slopes productive. In the neighbourhood of the towns and valleys, where the properties may be somewhat larger, and are in the hands of the trading rather than the peasant class, they are generally cultivated on the metayer system, or, if consisting of meadow lands, let out for a money rent. Cases also occur in which small tradesmen have their little properties cultivated by hired labourers under their own superintendence.

(d). In the hill districts and upper plains, the majority of the properties are cultivated under the metayer system, or a modification thereof. The estates belonging to charitable institutions are always leased out by public auction to farmers, who may, perhaps, more properly be termed contractors ("appaltatori"). They do not cultivate the lands themselves, but sub-let the different small farms on each estate to metayers (a most unfavourable system for the sub-tenants). This is the principal instance of sub-tenancies which I have noticed in Lombardy, and here the tenant-in-chief really acts the part of factor, or collector, for the charity. Some large private land-owners manage their property with the help of a bailiff ("fattore"), but the soil is usually cultivated on the metayer system.

(e). The irrigated plain, for the most part, is leased out in large farms to well-to-do tenants for a rent always in money. The average size of the tenancies is from 100 to 300 hectares. The ordinary duration of the lease in these tenancies is for nine years on the smaller estates; from nine to twelve years,—sometimes, not often, extending to fifteen or eighteen years,—in the larger properties. The leases under which the estates of charitable institutions are held never exceed nine years, and the some districts are terminable at the end of each terminable period.

(f). The farms held on the metayer and corn rent systems are let out by the year, six months' notice to quit being required on either side. They are, in general, allowed to run on without formal renewal for an indefinite period.

(g). In Lombardy the true "mezzadria" is only preserved in the province of Bergamo, where it extends not only into the mountain districts, but even over a large portion of the irrigated plain. Its conditions are the same as in Piedmont, namely, half produce, the peasant contributing his labour, and also the working capital in seed, farm implements and cattle. The land and other taxes west of the Adda are generally

divided into equal shares between population and tenant; east of that river they are generally paid by the former.

(4). In other provinces, there are modifications of the "mezzadria" contract; the principal of these is corn rent. The immediate products of the soil are subjected to a fixed rent in kind, generally wheat as the most marketable cereal, and the one less liable than the others to be injured by atmospheric influences, as being harvested before the season of hail-storms. In light soils, however, part of the rent is occasionally allowed to be paid in rye; vines and cocoons, however, are divided "à mezzzeria," and the money rent for the house and meadows and the "appendizi" are the same as in the province of Bergamo.

16.—PORTUGAL—*Report by Mr. G. Brackenbury, 4th December 1869.*

I. POPULATION, 3,986,558 inhabitants, a number supposed by competent judges to be below rather than above the mark.

II.—OCCUPATION OF LAND.

(a). The system is fourfold, *viz.*, by (1), small proprietors; (2), tenants under proprietors; (3), métayers; (4), emphyteutas. The last are occupiers by a tenure analogous in many respects to the copyhold of England, the rent being fixed, and the tenant irremovable; and they are by most Portuguese writers referred to the class of small proprietors.

(b). These modes of tenure vary more or less directly with certain broad geographical divisions of the country which have been adopted by most of the writers on rural economy. These agricultural regions are—

(1). THE NORTHERN REGION, which embraces the six administrative districts of Vienna do Castello, Braga, Oporto, Aveiro, Vizeu, and Coimbra, and contains 1,892,836 hectares, with a population of 1,853,397 inhabitants, which gives nearly 100 inhabitants per 100 hectares. This is the most thickly populated part of Portugal, and here small proprietors abound, and the "petite culture" prevails. It is stated that in parts of the district of Vienna the large properties are to the small as 1 to 15; in other parts, as 1 to 10; while the number of small proprietors nearly equals that of the day labourers. The configuration of this region is generally mountainous, and the natural fertility of the plains and valleys is augmented by irrigation, or by alluvial deposits from the rivers. The cereal chiefly cultivated is Indian-corn; in this region also is comprised the famous wine-growing district of the Douro.

(2). THE CENTRAL REGION extends from the valley of the Mondego to the south of the valley of the Tagus, and comprises the three administrative districts of Leiria, Santarem, and Lisbon. Its general aspect is not indicative of fertility, and with an area of 1,770,394 hectares, it has only 836,555 inhabitants, or 47 per 100 hectares. Although containing much poor and worthless land, many of the valleys, and the great basin of the Tagus, receiving, as it does, the rich deposit of the river, show great fertility. The defective conservancy of the river, and the consequent flooding of good land at the period of freshes, undo, however, much that labour accomplished. The land at such times is covered with sand, or remains under water, and it is said that there is no district of the country where marshes and fens are more numerous than here. In this

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region large and medium-sized properties prevail almost equally, and small properties and "la petite culture" are therefore rare. Owing to its central position, wheat, the southern crop, and Indian-corn, the prevailing crop of the north, are cultivated in about equal proportions; while the rice crops exceed those of all the rest of the kingdom. Of live-stock, the production is comparatively small. The farms are held by tenants under large proprietors, and under owners of medium properties.

(3). THE SOUTHERN REGION is in area the most extensive; in population, the thinnest of the four agricultural regions. The soil is for the most part thin, poor, and sandy, though interspersed occasionally with lands of a heavier and more fertile character. The land is cultivated by tenants under large proprietors.

(4). THE MOUNTAINOUS REGION, as its name indicates, is the highest elevation of the four regions; the density of its population is double that of the southern region; in this, as in the northern region, the "petite culture" is in the ascendant, and small and perhaps medium-sized properties are the rule.

(d). The total want of any official statistics in regard to land tenure in Portugal renders it impossible to give an approximate calculation of the quantity of land usually held by each small proprietor. The holdings, however, must be mostly of very limited extent, since the proportion of proprietors to the total cultivated surface of Portugal is such as to give only about $4\frac{1}{2}$ hectares (about 11 acres) of cultivated land as the share of each proprietor. Allowing for the large properties, which are the rule in Southern Portugal, and for the large and medium-sized estates, which occur more or less frequently in the other agricultural regions, it is obvious that there must be a very large number of proprietors whose portions of land will be extremely small. These properties are, perhaps, more usually intersected by others than held together.

(e). The duration of leases in Portugal is for the most part brief. The vast majority of them are in the nature of tenancies-at-will, from year to year. A five or six years' lease is in practice a long one; and leases of still longer duration are exceptional. It is easier to obtain a lease, for a term of years, of corn or pasture lands, than of vineyards, oliveyards, or orange-groves, since a dishonest tenant will have more temptation and greater facilities to exhaust the latter than the former during the period of his tenure.

(f). In case of ordinary tenancies for a limited term, rent is usually paid in money.

(g). (1). EMPHYTEUSE is thus defined by the Civil Code: The contract of emphyteuse arises wherever the owner of any real property (*prædium*) transfers the *dominium utile* of such property to another person, who binds himself to pay to the owner a certain fixed sum called a "foro," or "canon." The landlord, who thus retains for himself only the *dominium directum* of the land, is called the *Direito Senhor* or *Senhorio*; the tenant is called the *emphyteuta*, or more commonly the *Foreiro*.

(2). The Romans, it is well known, when they conquered a country, occasionally left the land in the possession of the inhabitants, and at other times divided it among settlers or the victorious soldiery. The occupiers, to whichever of these classes they belonged, paid an annual fixed rent to the Republic, called *vectigal*. Squatting was also permitted

on some of the unreclaimed lands of the conquered country, the squatters being held to pay to the State a fixed proportion of the fruits of the soil and a varying quota of the live-stock. Another portion of the unreclaimed lands was reserved for the benefit of the State or of the municipalities. The decurions, who were charged with the administration of these lands, let them on leases, some of which were originally terminable, but which all tended to become perpetual. These leases did not, however, convey any portion of the ownership, and the tenants were liable to have their rents increased, to be evicted whenever the State alienated the dominion, and thus to lose the benefit of any improvement effected by them. Such risks tended naturally to prevent the tenant from ameliorating his holding, and hence to defeat the object of the lease.

(3). By degrees, therefore, the improvements made by the tenant were secured to him; he was guaranteed from increase of rent and from eviction, the alienation of the property by the State being held thenceforth to affect the quit-rent only¹; and finally, he obtained full power to dispose of the land, which nevertheless remained subject to the quit-rent, in whatever hands it might be. The tenant, thus, in fact acquired the *dominium utile* of the land. * * *

(4). The Portuguese Code, bearing the name of Alfonso V., embraced a system of emphyteutic laws, and from this time forward emphyteuse became one of the leading tenures of Portugal, and was applied to cultivated as well as to waste lands, though more commonly to the latter. The monarch, the great feudal lords, the churches, the monasteries, were all glad to alienate, in this form, waste or other lands which they could neither sell nor cultivate; but, whereas the rents exacted by the Romans had been for the most part moderate, they became, under the new system, in many cases exorbitant, the large and wretched class of non-proprietors being forced to accept, in return for land, any terms which its owners might choose to impose upon them. The rent and other services thus exacted from the tenant became, and still was in a recent date, so oppressive, that it was only with extreme difficulty that he was able, in many instances, to provide himself with the bare necessities of life. These "foros" were often not only exorbitant in amount, but were vexatious also in their variety and in the difficulties with which the means of paying them were procurable. Among the payments required with frequency by the ancient contracts of this tenure was such thing as a quantity of incense, a certain number of chickens, turkeys, and sea-fish, where the holding was perhaps in the interior of a country possessing no roads. * * *

(5). Sub-tenants were formerly permitted to purchase the land in fee simple. The Codigo Civil has abolished this privilege, and the tenant remains by right in occupation if he pays the rent punctually to the proprietor the annual quit-rent. The tenant can, with the consent of the proprietor, sell the land; the purchaser and proprietor remain in the same relation to each other as existed between the tenant and himself. The mutual consent of both is required for the sale.

¹ As when Government alienated the land for a zemindar.

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proprietor to sell his interest in an estate. (Mr. W. Doria, 10th December 1869.)

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(6). Under emphyteusis the proprietor has no power to raise the rent, a provision in favour of the tenant introduced by the famous Marquis Pombal. On non-payment of rent the landlord can evict the perpetual tenant, whose right in the land is sold by auction. (Mr. W. Doria.)

17.—GREECE—*Reports dated October and November 1869.*

(a). Barely one-sixth or one-seventh of the whole superficies of the kingdom of Greece (excluding the Ionian Islands) is under cultivation, though half of the remaining portion is either susceptible of tillage, or could be rendered so by skill and labour.

(b). The lands owned by the State occupy nearly three-fourths of the whole extent of territory suitable for cultivation, and at different times it has been proposed to portion them out among the peasants.

(c). Out of a total of 5,600,000 acres of productive land, but 1,800,000 are said to be under cultivation. This is mainly to be attributed to the smallness of the agricultural population, which does not number above 600,000 or 700,000 divided into 150,000 families, each varying from four to five individuals. About one-third of those families is possessed of land, and, as far as can be ascertained, the proportion between the large and small proprietors may be assumed to be one of the former class to sixteen of the latter. The scarcity of population, the want of capital, and the superabundance of land, all combine to make it impossible for the large proprietors to find tenants in the English acceptation of the term. They are consequently compelled either to cultivate their properties for their own account with the assistance of hired labourers, or to enter into a kind of partnership with the peasants, from whom they receive a certain fixed share of the produce, which varies according to circumstances. The latter system known as the system of having *collegas* (colleagues or co-partners) is almost universally resorted to in the ancient provinces of the kingdom, with the exception of Euboea, Phthiotis, and Attica, where there are very extensive estates which can be more advantageously cultivated by the owners themselves.

(d). The Government lands are farmed on the *collega* plan, but the position of the peasants settled in them differs on one very essential point from that of the *collegas* on private properties; for whereas the latter can under no circumstances establish a legal claim to the portion of the land they cultivate, the former acquire absolute proprietary rights to any part of their holdings on which they may have made improvements of a permanent nature, such, for instance, as buildings or plantations.

(e). When the proprietors of arable lands furnish the seed and the oxen required for ploughing, one-tenth of the produce is first deducted to meet the taxes (the tithe amounts to 8 and the local imports to 2 per cent.), and they then receive from the tenants one-half of the remainder, besides the quantity they may have supplied as seed. When the proprietors merely provide the land, they receive, according to its quality,

dispute whether or not the "Fæstetvang," or obligation to lease on two lives, was a positive legal fact enforced by penalties, to the exclusion of other shapes of tenure, before the issue of an ordinance of the year 1790. However that may be, the existing law is so jealous of infringements of the "Fæste" principle, that when any "Bøndergaard" is converted into a freehold, twenty years must elapse from the time of its purchase before it may be let otherwise than on the two lives system, or on the fifty years' tenure named immediately below.

(7). When the farm of a "Bonde" becomes vacant, the landlord must assign it to a new tenant within a year and fourteen days. The exceptions are—

(1). If no tenant offer a fair rent, and the landlord can establish the fact, he may, under severe restrictions, parcel out the vacant "gaard" amongst adjacent farms.

(2). The landlord may turn the farm into lots for labourers.

(3). Or into plantation, on condition of building two houses, and giving each a small piece of ground.

(4). Or absorb it into the demesne, on condition of giving up an equivalent of demesne in exchange.

(5). Or sell the farm, or convert it into a base free-hold called "Arvefæste," which will be described hereafter.

(6). Or lease it for fifty years certain, and so doing he is not subject to the general rules of the "Fæste" system. This plan has been growing common of late, and to prevent its abuse, the government has just presented a precautionary Bill to the "Folkething."

On exception (5) I should remark that Danish legislation shows traces of a disposition to encourage the great landholders to sell the farms held on life tenures to their occupants.

(7). Land may also be held in "Arvefæste," or hereditary tenure, of which relation there are two species: (1) "Arvefæste" simple, where the lease is to the tenant and his heirs for ever, in return for a quit-rent, the estate escheating to the owner on failure of tenant's heirs; (2) "Arvefæste" with right to sell and mortgage. This tenure seems to be like that of the so-called "tenant-right" estates of our border country. The landlord is a perpetual rent-charger, receiving an annual payment of grain, and a certain relief whenever the ground passes to a new owner. The second of those kinds of tenures is very common. In Danish discussions it is always assumed to be equivalent to fee-simple, a fact which should be borne in mind. "Arvefæste" of the second species seems to me to resemble the Roman Emphyteusis, but the Danish Emphyteuta has absolute power to alienate. The Danish system may also be compared with Sir Arthur Chichester's settlement of Ulster.

(8). No estate, large or small, can be parcelled without permission from the Minister of the Interior. The strict rule is, that when a "gaard" is broken up, there must be reserved one lot of at least 25 acres of first class land. Farms of less than 25 acres may not be sub-divided, except under very special circumstances: one lot of 10 to 12 acres must always be reserved. When demesne is sub-divided, there must be told off for separate sale or occupation as many lots of 80 acres as the feudal owner owned knight-horses for military service. For building,

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lots of 2 acres may be detached from an estate, and any lot, however small, may be cut from a farm when the intention is to cede it to the owner of a contiguous property, or to annex it to a house which has no land. Before a motion for the so-called "Udstykning" can be lodged at all, a number of formalities have to be gone through, amongst which I may notice the preparation of a map of the ground to show the exact nature of the division proposed. This is insisted on as a precaution against the parcelling being done in strips, and to ensure a division into squares or other suitable shapes of ground.

(i). It should be unnecessary to remark that these rules do not bear on the life-leaschold farm. Neither do they apply to the "Housemen" or occupiers of small plots, which are too small to be ranked as a "Böndergaard."

II.—LARGE AND SMALL PROPERTIES.

(a). The advocates of production on a grand scale may derive many arguments for their views from the case of Denmark. Except in a very few special instances, none but the large manors inspire comparisons with inferior farms elsewhere. On these alone is the business of agriculture transacted with adequate means, intelligence, and zeal. The superficial observation of travellers has sometimes fancied likenesses between Denmark and England. But the circumstances and aspect of the two countries, their social and intellectual characters, are, in truth, utterly dissimilar. Danish types of things and persons differ *toto cælo* from English types, so that the same scale will not measure both; it is only in a loose way that a Danish manor can be compared with a first rate English farm. There are 1,750 manorial farms and "Avlsgaarde"¹ which, however, only make up one-eighth of the kingdom's hard corn. Their average size is 370 acres; 500 of them have an average area of 400 acres each, the farms on the islands being larger than those of Jutland. The "Hovedgaard" is always farmed as a whole. The cultivator is either the owner or a gentleman farmer belonging to the upper classes of society. The lease is usually for as many years as the land is divided into marks, the average numbers being, say nine or twelve; for seven marks, the lease, however, would be for fourteen years. All the relations of landlord and tenant are governed by the lease, which is always minutely particular as to the manner of cultivation, terms of payment, &c. The sub-letting of any part of the leased land entails forfeiture of the lease, sub-letting not being legal, unless by agreement; good manorial land is rented at from 18s. to 17. 5s. an acre—the selling value would be, per acre, from 23% to 35%. A net profit of 3 per cent. would be thought handsome, but few amateurs could reach that figure.

(b). Important though the manor be as an influence and example, the "Böndergaard" is the characteristic farm of the country. The peasants' farms, freehold or leaschold, may be compared for area with the farms of the west coast of England, their average size being 60 to 70 acres. There are 70,000 of them, of which nine-tenths are of the new freehold category, the whole making up three-fourths of the kingdom's "hard-

¹ Estates which derive from Sædegaard.

corn." One Danish "Böndergaard," or peasant's farm, is, as I imagine, very like another, be the tenure leasehold or freehold.

(c). It has been explained in the first chapter that the law of Denmark withholds the name and quality of "Bonde," or peasant, from all proprietors or occupiers of land whose holdings are of less than about 10 acres; that in practice it is hard to trace the frontier line between the "Bonde" and the "Huusmand," who is the tenant or owner of a house with or without land attached. There may be 137,000 of these housemen, of whom nearly one-half have, on an average, 4 or 5 acres of land, one-quarter lots of less than an acre, the rest having mere fractions of soil, or none at all. The holdings are often less important than they look on paper, for some of them, especially in Jutland, may be uncultivated ground. At the top of the stratum of housemen are a few who, being employed in fishing, or otherwise driving an accessory business as carpenters, coopers, blacksmiths, &c., approach the position of a "Bonde" of the poorer sort. But the "Huusmand" is, on the whole, if a freeholder, the equivalent of the ordinary Prussian peasant, if a leaseholder, the equivalent, in spite of his land, of the English day-labourer. He can very seldom subsist on the produce of his holding, and has to work for hire, 25 acres being, I imagine, the minimum of land here sufficient to support a family. Two-thirds of the housemen are freeholders, the rest being tenants on two lives or at will. The freeholders are rather more prosperous than the leaseholder.

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III.—MR. SAMUEL LAING'S ACCOUNT (1852).

There are large estates and small; all over the country, estates of noblemen and gentlemen and estates of peasant proprietors. The greater part of the land is in the hands of the latter class. They are increasing, not by dividing and sub-dividing their land among their children, which seems to be a social characteristic of the Celtic race, and peculiar to the peasantry of France and Ireland, but by clubbing together, and buying and dividing noblemen's estates or crown lands which happen to come into the market. As a class, they are wealthy, and such combined purchases and divisions of land are common. The land is well divided for the capital and industry of the country. The great *verpachter*, with his skill and capital, and the working husbandman with his own labour and his family's, and his little working and milking stock, can find farms to suit them. I have seen none so small as to be cultivated without horses, by spade labour only. In all northern climates on the continent, as stated before, the short interval of time between winter and spring, between the frozen, impenetrable state of the soil, and the season for sowing, prevents the division of land into portions too small to maintain horses becoming prevalent. Spade-husbandry could not overtake the seed-time, and frost and snow are natural preventive checks upon too minute a division of the land. The number of estates in Denmark proper of an extent to be manors, and having manorial rights, and belonging principally to the nobility and gentry, is not above 800, and of freehold estates of smaller size, belonging generally to peasant proprietors, the number is about 63,700, not including houses with gardens only, and without farm land. There are, besides, about

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10,000 copyholders, that is, holding land on leases, transferable by sale, mortgage, or inheritance, and about 56,300 leaseholders holding land on life-rent or on long leases, but with no right of alienation.

19.—SWEDEN—*Report by Mr. A. Gosling, dated 22nd February 1879.*

I. Population on 31st December 1868, 4,173,080. Industrial pursuits are agriculture, mining, navigation, fishing, and manufacturing employments of every description.

II.—LAND OCCUPATION.

(a). The greater part of Swedish soil is the property of peasants who cultivate it themselves, and consequently the land is, for the most part, divided into small properties. There are, relatively, few large properties in the possession of individuals. The private landed property in Sweden is divided among about 290,000 land owners.

(b). The large majority of land owners cultivate their own land. As a rule, it is only in connection with large properties that land is leased.

(c). The entire country contains 66,438 "mantal" or assessed unities. If this sum be divided among the before-named number of proprietors, an average is obtained of less than a quarter of a "mantal" for each property. Each "mantal" on the average is divided into four properties, ranging between $1\frac{7}{10}$ in the governmental district of Stockholm, and $11\frac{1}{2}$ in the governmental district of Wermland.

(d). The average quantity of land contained in a "mantal," calculating from the entire area of the kingdom, is about 1,220 "tunnland" or 1,488 English acres ("tunnland" = 121,986 English acres). The average, however, varies considerably when taken in separate "lans" or governmental districts, in consequence of different degrees of cultivation and fertility, being as low as 225 "tunnland" (274 English acres) in the district of Malmohus, and 26,000 tunnland (31,716 acres) in the district of Norbotten.

(e). Entailed estates exist in Sweden, but no new entails can be formed.

(r). (1). The total area of tillage land is about 6,460,000 acres; that of natural grass land about 5,360,000 acres. The total area of land in the whole kingdom, including islands, is estimated at about 112,380,000 acres. Machinery is, relatively, very little used; but it is gaining ground on the larger estates.

(2). A very large proportion of the land being the property of peasants, worked by them and their families, considerably reduces the necessity for hired labour. This, however, is increasingly required in connection with an improved system of farming.

(3). There are about 310,000 hired farmers and garden labourers (paid either in wages or by holdings and in kind). Of these, 141,000, or about five-elevenths, are females. In addition to regular farm labourers, there are about 100,000 "torpare," who hold cottages and small plots of land for which their families and beasts of burthen are bound to render a certain number of days' work annually.

(4). If these 310,000 hired and other labourers and the 100,000 torpare are divided among the total area of tillage land in the kingdom, viz.,

6,460,000 acres, it will give a proportion of about one labourer to every 15 or 16 acres. It must, however, be borne in mind that there are nearly 200,000 proprietary peasant farmers, and about 40,000 tenant farmers who (in most instances with their wives and families) are regularly engaged in farm labour.

(g). As before stated, tenancies and sub-tenancies are not numerous, on account of the very large proportion of the land being in the possession of peasant farmers, and it being the rule even for the owners of large estates to cultivate their lands themselves. In those cases in which tenancies exist, they usually consist of entire estates, or of parts of large estates which have originally been separate properties. The average quantity of land held by each tenant is consequently about the same as the quantity held by each proprietor, *viz.*, somewhat less than a quarter of a "mantal," or about 385 acres, varying, according to the character of the soil, from about 60 acres in the government district of Malmöhus to about 5,000 acres in the government district of Norbotten. The above average includes forest and waste lands. The average quantity of tilled land held by each tenant farmer is about 22 acres, and of natural meadow land about 18 acres.

(h). The tenure is by lease for a certain term of years (but not exceeding fifty), or during the natural life of the tenant and his wife. Sub-tenancies are prohibited. This prohibition does not apply to sub-farms subordinate to the principal property leased by the tenant. The rent of such sub-farms, however, may not be raised above the sum determined by previous tenants of the principal property. This, notwithstanding the tenant of the principal property, is often permitted by his lease to let sub-farms to new tenants, as vacancies occur, on such terms as he may be able to obtain.

(i). Tenancies may be created both by parol and written agreements. When no certain term is prescribed for the duration of tenures, the term is presumed to be one year. Tenants of small farms, however, are generally allowed to retain their tenures as long as they live, and are usually succeeded by their sons or sons-in-law.

(k). Rent is paid according to the nature of the agreement—in money, kind, and labour. Rent is determined by agreement alone. If determined in money or kind, it is paid once a year. Payment of rent by a share of the produce is rare.

(l). The relations between tenants and proprietors are generally friendly; between small tenants and large proprietors they have hitherto been patriarchal. Of late, however, signs of discontent have been manifested by some of the smaller tenantry, which, before long, will probably call for various amendments in the existing laws.

III.—MR. SAMUEL LAING'S ACCOUNT (1839).

(a). The whole arable land of Sweden is divided into 65,596 hemmans; but the word hemman signifies merely an estate—a homestead,—and gives no idea of the extent or value of the land. There are hemmans in the same parish almost twenty-five times larger and more valuable than others. It is a fiscal division only, for the purpose of levying the land-tax upon different classes of estates according to ancient assessments.

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(b). Taxation in early times was personal; or, at least, partly on the supposed ability or other circumstances of the possessor of the land, and partly on the value. The first great step towards free institutions and civil rights in Europe was converting personal taxation into territorial, or taxation upon value and extent of property; and countries are free at present, in proportion to their approximation to this first principle in civil rights, that property only is a subject for assessment. Domesdaybook, which some of our historians consider as a tyrannical valuation of the country by the Conqueror for the purpose of oppressively taxing his Saxon subjects, was, in reality, a wonderfully perfect and enlightened step for that age to equalise all assessments and services or payments to the State according to value, and from which all our subsequent progress in free institutions must be dated.

(c). The principle of personal or mixed taxation runs through the whole Swedish system, and is the main cause why the husbandry of the country can never improve, nor the people ever be free. A whole hemman of land is considered to be such a portion of arable ground as would let for 40 silver dollars, or about £9, and pays taxes and local burdens accordingly. But the old hemmans cannot be revalued, for the whole class of nobility and of peasantry would oppose in the Diet a re-valuation which would throw additional burden upon their old lands.

(d). New land taken into cultivation is consequently much more heavily burdened than the old and better land. In every country the best quality of land is the first taken into cultivation. A hemman of such land is necessarily of far better quality, and from the inferior value of agricultural produce in the early age when it was rated as a hemman, of far greater extent than land subsequently taken into cultivation.

20.—NORWAY—*Mr. Samuel Laing (1836)*..

(a). In Norway the land, as already observed, is parcelled out into small estates, affording a comfortable subsistence, and in a moderate degree the elegancies of civilised life; but nothing more. With a population of 910,000 inhabitants, about the year 1819, there were 41,656 estates, or 1 to every 22 of the population. * *

(b). Land in Norway will give a comfortable living to the owner, but will do no more. No investment beyond what a man occupies and uses for his family would be profitable, because where almost all are proprietors, tenants are scarce; and from the standard of living being high, and formed upon a state of society in which almost all are proprietors of the farms they cultivate, and are living fully upon the produce, a respectable tenant would live as well as other people of his class, that is, as well as the landlord himself. It would be only a small surplus that, after taking out of the produce his own living and that of his servants, he would have to pay yearly as rent.

(c). It is usual, therefore, when a person happens to have more than his own family farm, to *hygsel* the land; that is, to let it at a trifling or nominal yearly rent for the life of the tenant and of his wife, the man and wife being always joined in these leases, and to take a fine or

grassum when it is granted or renewed. That quantity of land which supplies a family with farm produce, and requires no great skill, activity, or capital to manage, is all that is wanted by any individual. There is consequently little demand for land, while family arrangements among heirs often fill the market without any demand.

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21.—RUSSIA PROPER—*Report by Mr. Mitchell January 1870.*

I. (a). Population, 59,097,859 of both sexes. In thirteen of the central provinces of Russia, where the soil is less favourable to the development of husbandry, the population is very extensively engaged in industrial pursuits. The manufactories spread over the country, but found mostly in the provinces of Wladimir, Moscow, St. Petersburg, and Jaroslav, give employment to about 358,000 workmen. Nearly all the villages in the latter provinces are interested more or less directly in the development of manufacturing industry. Thousands of hands are employed in the villages of Wladimir in spinning and weaving cotton, while entire village communities devote themselves to some particular branch of industry. Some villages produce hardware, others cutlery; wooden boxes will be made in one commune, boots and shoes in another.

(b). But apart from these well-established industries, which render the pursuit of agriculture in these districts of secondary importance, it may be said that, except in the Black Soil country, (two-thirds of the agricultural population), the peasant in Russia is at the same time more or less a mechanic, a manufacturer, a trader, and a labourer for hire. The long months of winter, during which all agricultural operations are in suspense, favour the development of the industrial and commercial instincts of the Russian people. They have also to a considerable extent been developed by serfdom, under which the peasant attached to an unproductive soil was driven into other pursuits by the necessity of paying his quit-rent. The tendency of the Russian peasant to seek industrial occupation after the termination of his field labours, has been promoted by increased taxation, consequent principally on the system of land taxation. The carriage of goods by the rivers and highways likewise continues to give employment to a considerable portion of the peasant population in summer and in winter. In the former case the peasant returns in time to reap his harvest. In the purely agricultural provinces the peasants make their own implements, and the women clothe their families with the wool and flax which they weave and spin. But their cottages are for the most part constructed by carpenters, who come from villages on the Volga.

II.—LAND OCCUPATION.

(a). Notwithstanding the Emancipation Act of 1861, one-third of the cultivable land in Russia Proper is still held by the State, one-fifth by landed proprietors, one-fifth by the peasantry, and the remainder under a variety of forms by colonists, churches, &c.

(b). Prior to the emancipation, the landed proprietors had possession of 300,872,308 English acres, of which one-third (or 100,000,000 acres) was in the occupation of their serfs. The Emancipation Act raised

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to about 239,000,000 acres the quantity of land in the actual possession of the nobility or gentry, and reduced to a little over 60,000,000 acres the area of land which the serfs formerly held at a quit-rent or in return for service, but of which the emancipated peasantry were bound by law to become proprietors in free-hold, or tenants at a rent fixed by law.

(c). While the landed nobility and gentry and the merchants who have purchased lands since 1861 form a class of landholders numbering a little over 100,000 (exclusive of their families), and holding one-fifth of the total area of land capable of being cultivated in Russia Proper, the peasantry of Russia, numbering about 48,000,000 of both sexes, and formerly known as serfs, crown peasants, and appanage peasants, now occupy, under a variety of denominations and forms of tenure, another fifth of the area of cultivable lands.

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(d). The peasantry of Russia may be divided into three principal groups in respect to the mode in which they have acquired possession of land—

1. *Peasants on land not mortgaged to the State.*—This group includes about 600,000 of the ex-serfs who have accepted the gift of a minimum allotment of land from their former lords, in lieu of purchasing with the aid of Government, or of holding at a fixed rental, the lands to which they were entitled under the Emancipation Act. Also small numbers of proprietors who acquired their farms in five other ways.

2. *Peasants on lands mortgaged to the State.*—This class is composed of two-thirds of the total number of ex-serfs, and of all the peasantry of the appanages (of the Imperial Family) who, either at the instance of their former lords, at their own desire, or by legislative compulsion (as in the case of the appanage peasants), have contracted a debt with the State for the purpose of purchasing the lands allotted to them under the Act of emancipation. It is, however, only in the southern, south-western, and north-western provinces of Russia, where the commercial system does not exist, that this class of peasants can, from an English point of view, be considered landed proprietors. In the rest of Russia, particularly in the thirty-three provinces of Great Russia, the proprietary rights in lands allotted to the peasantry are vested in the communes, of which the peasantry may, therefore, theoretically be considered only tenants. At the same time they enjoy the perpetual, hereditary, and individual usufruct of their homestead.

3. *Peasants settled on crown lands.*—These, whether under the communal system or otherwise occupying crown lands, and hitherto known as “crown peasants,” are now known as peasant proprietors. “Their number is 23 millions of both sexes. * * The redemption scheme does not apply to this peasantry, and the crown is not considered a mortgagee of their lands. The state demands the payment of a yearly rental (“obrok”), and makes the alienation or transfer of land by the peasantry conditional on the purchase money (which is fixed by the capitalisation of the rental 5 per cent.) being paid into the exchequer of

crown domains. The proprietary rights of this peasantry would further seem limited by the fact that the rents, the capitalisation of which at 5 per cent. represents the price of the land, are fixed only for twenty years, after which they will be raised. The legislature has bestowed the title of proprietors on the peasantry, and their lands can in no case revert to the Crown.

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(f).—TENANTS.

The forms of tenancy may be classified as (1) tenancy under Legislative Acts, (2) tenancy by mutual agreement.

(g).—*Tenancy under Legislative Acts.*

Under this head may be placed theoretically—

(1). The great bulk of the peasantry of Russia Proper, whose communes have accepted the aid of Government in the redemption of their lands, and who have not purchased from those communes their individual proprietary rights.

(2). All the communes of ex-serfs which continue to hold their allotments and homesteads at a rental fixed by the legislature, and paid either in money or service. This class of tenancy exists only in the thirty-three provinces of Great Russia, and still includes about 3,000,000 of males, or one-third of the total number of ex-serfs.

(3). The ex-crown peasants who continue to hold under communes that have not paid off the capital of the rent with which the land is burdened, and the payment of which in one sum converts the tenancy into freehold proprietorship.

(h).—*Tenancy by mutual agreement.*

Notwithstanding the allotment of land to the peasantry, the leasing of lands from landed proprietors and from the Crown has become very general, particularly in the purely agricultural districts. A very large proportion of the estates of the landed nobility or gentry and large tracts of Crown lands are thus held by the peasantry at a rental fixed by mutual written agreement, frequently for periods of three, six, nine, and twelve years, but as a rule for the term of one year. It is only in exceptional cases that these lands are leased for the purpose of being built on. The peasants having their own homesteads require these additional lands only for cultivation.

(i). (1). The quantity of land left in the actual possession of the former privileged class of landed proprietors, gives an average of 673 dessiatinas (1,925 acres) to each proprietor, and that of which their ex-serfs are now either perpetual usufructuaries (proprietors) or perpetual tenants is about $3\frac{1}{2}$ dessiatinas (10 acres) per male. The ex-serfs of the appanages have, however, retained an average allotment of $5\frac{2}{3}$ dessiatinas ($15\frac{1}{2}$ acres), and the crown peasants 7 dessiatinas, or 20 acres.

(2). Where the communal system exists, the peasant allotments are necessarily very much intersected—a disadvantage that arises principally from the three-field system of cultivation, under which a peasant obtains a small parcel of land near his own homestead and another at a considerable distance, each householder receiving his share of the nearest

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and best, as well as of the farthest and worst, lands held by the commune.

(k). The peasant allotments are in process of being purchased with the aid of Government to the extent of four-fifths of the value placed upon them by the Emancipation Act. Until the general mortgage (now amounting to 487,174,281 roubles, or £64,956,570) is paid off, the peasantry will be unable to raise any further loans on the legal security of immoveable property.

(l). While assisting the peasantry, the Imperial Government has at the same time foreclosed the mortgages which it held on the lands of the nobility or gentry to the extent of £53,000,000.

22. It appears from this account that middlemen, or farmers of rents, the curse of Bengal, do not exist in the United States and in the several countries of Europe, except in Silesia, where they are employed in collecting rents from small holdings near towns, which are cultivated by inhabitants of the towns, whose auxiliary earnings from other industries enable them to resist undue exaction. With this exception, and some others in Portugal and Italy, the land in the countries on the continent of Europe, which have been passed in review, and in the United States, is held by proprietors, great and small. The great proprietors do, indeed, imply the existence of a class of tenant farmers, and of a large class of agricultural labourers. The tenant farmers, however, on these great estates, are men of capital, between whom and the Bengal ryots there is not the least resemblance; the agricultural labourers on the same estates are not wholly dependent on their wages as labourers; each of them has a cottage and a small holding which he cultivates as proprietor, or, in Southern Europe, on the metayer system. Italy and Portugal bear striking testimony to the value of peasant proprietorship, in that ungenial soils are held in such proprietorship:—"an owner alone would give the loving labour requisite to render the rocky mountain slopes productive." The United States and the military States of France and Germany are countries of peasant proprietors; Russia has added to her military strength by the liberation of her serfs; and while her Empire has the important advantage over other European countries that it contains room for her population to expand to treble its present amount, without overcrowding, her means of such expansion are through migrating or colonising communities of peasant proprietors,—thus foreshadowing a danger to the liberties of Europe, which only the multiplication of peasant proprietors in England and elsewhere can avert. Austria, the weakest of the military monarchies, has a preponderance of great proprietors.

APPENDIX XXIV.

CONDITION OF AGRICULTURAL CLASSES IN EUROPE.

1. The condition of the agricultural classes, proprietors, tenants, and labourers, as affected by the land tenures in Europe, is indicated in the following extracts from the sources quoted in the preceding Appendix:—

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I.—PORTUGAL.

(a). In the ten years from 1852 to 1861, both inclusive, the registered debt owing by the land in Portugal on mortgage amounted to £7,850,000 in round numbers; of this sum, about one-fifth only had been lent by the religious corporations, who charged a fixed interest of 5 per cent. The remaining four-fifths were loans from private persons; and in the majority of cases it is certain the rate of interest was extremely usurious, averaging from 10 to 15 per cent., and even higher.

The rate of interest charged by the Land and Credit Company cannot exceed 6 per cent.

(b). The standard of living and general circumstances of the rural population at large are thus described by M. Rebello de Silva:—
“The rural populations of Portugal are for the most part far from robust, and in many localities they are ailing, weak, and apathetic. The want of sufficient nutriment, and the marshy miasmas to which they are exposed, contribute to the gradual degeneration which they exhibit. Their vigour and growth are stunted by the large quantities of vegetable food which they are compelled to consume in order to obtain the quantum of nitrogenous substance essential to life. Pot-herbs, a little rice, chestnuts, and scanty rations of fish, constitute, with vegetables, the main sustenance of our rural classes. Beef, mutton, goat's flesh, and pork, are never eaten by them, except perhaps on a few holidays in the course of the year. The people live and labour, or it may be more correctly said that in many parts of the country they only vegetate, and are too weak and too little energetic for the physical efforts demanded of them.” Gloomy as this picture is, I fear it is but little exaggerated, and its main details are certainly more applicable to the class of very small proprietors than to the hired labourers, who in the Alemtejo at least, obtain, besides their wages, a scale of rations into which meat enters to a considerable extent. * *

(c). In Portugal the landlord and tenant regard and treat each other almost as if they were declared enemies. The contract which binds them together is tacitly adjusted to the prejudice of both, for the landlord thinks that his sole interest lies in the elevation of the rent; while the tenant, careless of the ills arising from the exhaustion of the soil, wrings from it the maximum produce with a view to satiating his own greed, and the still insane avarice of the landlord.

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(d). As regards cultivation of their farms and general independence of character, they are, as might be expected, inferior to the small proprietors; as regards employment of labour, mode and standard of living, and, perhaps, solvency, they are superior.

(e). In the present day, metayage reigns only where the poverty of the rural classes is greatest and most extensive. Impotent, as a rule, to stimulate the improvement of the soil, it is almost always accompanied by agricultural backwardness, and not seldom followed by immorality. The metayer is frequently guilty of fraud in the division of the produce, a circumstance which forces the landlord to continuous vigilance, which in the end becomes oppressive and vexatious. * *

(f). The standard of living and comfort among the rural classes has been already described in general terms, and is such as under the less genial sky of Ireland would be almost too low to support a bare existence. * *

(g). The system of taxes is evaded systematically by the rich, and presses with frightful severity on the poor.

We trace here a strong resemblance between the small proprietors in Portugal, burdened with frightfully severe taxes, and Bengal ryots burdened with continually increasing rents.

II.—ITALY.

(a).—*Small Proprietors.*

Except in the Calabrias, they are tolerably well housed, fed, and clad; live on wheat or maize, bread, salt-fish, vegetables, pasta (macaroni, &c.), and fruit; fresh meat once or twice a week. They are coarse and rude in their manners and habits, are looked upon as small gentlemen. In the Calabrias they are reported as being much worse off. Mr. Albaru, Vice-Consul at Cotrone, in his report states: "In truth, it may be said, they are badly lodged, fed, and clothed. The small gains which they derive from the very small properties are barely sufficient for common necessities, having furthermore to apply these gains, before everything else, to the payment of the numerous Government imposts, which they barely suffice to do. The class in question, for their own actual subsistence, is obliged to contract debts, which in a short space of time absorb the whole of their little properties, and we see these small proprietors fall into distress and disappear."

(b).—*Tenants.*

The mode of cultivation by tenants on small holdings differs in no respect from that of small proprietors; their mode and standard of living is inferior to that of small proprietors. They live very frugally; eat fresh meat probably twice a year, Christmas and Easter. Their existence depends on their characters; if bad, no one will give them a farm. Their social position is inferior to that of small proprietors, but in probity and good faith they are said to be superior. As respects tenants holding large farms, they are a different class, usually possessing some amount of landed property of their own, but are a rough set, and often uneducated.

III.—NETHERLANDS—*Report by Mr. Laycock, 20th December 1869.*(a).—*Small or farming proprietors.*

After what I have said of the average size of Dutch farms (50 to 100 or 125 acres), it is almost unnecessary to state that there is nothing, either in the way the occupiers of these farms are housed, clothed, and fed, or in their general circumstances, which calls for much commiseration; perhaps there is but little which suggests improvements. A succession of bad harvests, a blight, or a murrain, may indeed occasionally be the cause of extensive losses amongst these more than peasant-proprietors, but is seldom that of real suffering. By drawing on their own pecuniary resources put by for the dowry of a daughter, or the portion of a younger son, by cheerful self-denial and careful husbandry, they sooner or later succeed in making up for their losses and going ahead again. The cattle-plague was a source of untold loss to the pastoral population of Holland; whole herds were swept off by its malignant agency, and yet the empty meadows have already been re-tenanted, and Holland is as rich in cattle as she was before the scourge first appeared.

(b).—*Tenants.*

With regard to the manner in which tenant-farmers cultivate their farms and employ labour, and with respect to their standard of living, solvency, independence, and general circumstances and character, I cannot learn that they fall far below the average of proprietor-farmers. They are, of course, a less wealthy class, inasmuch as neither the land which they occupy, nor, in general, the buildings which they use, or the house in which they reside, belong to them; but this does not prevent the observations on proprietor-farmers in the earlier part of this report from applying equally to them.

(c).—*M. de Laveleye.*

(1). The farmers of Holland lead a comfortable, well-to-do, and cheerful life. They are well housed and excellently clothed. They have chinaware and plate on their sideboards, tons of gold at their notaries, public securities in their safes, and in their stables excellent horses. Their wives were bedecked with splendid corals and gold. They do not work themselves to death. On the ice in winter, at the kermesses in summer, they enjoy themselves with the zest of men whose minds are free from care.

(2). The Belgian farmer, we have shown, is neither as rich as his Dutch neighbour, nor can he enjoy himself in the same way.

(3). One reason is that in Holland the townspeople have at all times invested their savings in public securities, and generally left landed property alone, which has thus remained entirely in the hands of the peasants. In Belgium, on the contrary, the nobility have retained large landed property, and capitalists have eagerly bought estates. Hence a good number of the peasants have become mere tenants.

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NETHERLANDS.

Para. 1, contd.

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BELGIUM.

Para. 1, contd.

IV.—BELGIUM—*Report by Mr. Wyndham, December 1869.*

(a). I had some conversation here with a gentleman farming about 100 hectares of his own land. He expressed to me an opinion that the small owner is in very many instances less intelligent and less hardworking than, and in an inferior condition to, the small tenant. The passion for buying land, he said, was so great in Belgium, that ruinous prices were paid for it, which left to the purchaser little or no capital to lay out upon his purchase, which brought him in $1\frac{1}{2}$ per cent. or 2 per cent. at the most for his outlay.

(b). A hectare of land sold in small allotments, he stated, would fetch in the market—so great was the competition for land—as much as 15,000 francs; whereas a piece of land, 10 hectares in extent, sold in one lot, would not fetch more than 10,000 francs. Mortgages on small properties, he said, were rare, although sometimes a purchaser would pay for two-thirds of his purchase in ready money, and mortgage the rest for a short term. Land at a distance from villages and towns was not, he stated, so much divided; properties were much scattered, and tenants had great difficulty in hiring land lying together, a source of very great inconvenience.

(c). Small holdings produced higher rents than large farms; it was consequently in the interest of landowners to let their properties in very small farms, say of 1 hectare each, rather than in farms of 50 or 100 hectares. He further remarked that Belgium formerly was cited as an example for agriculture, but that to-day she was retrograding.

(d). Properties being in general very much sub-divided, it frequently happens that the owners of land do not live on their own properties, but inhabit towns or villages adjacent thereto.

(e). The position of the agricultural labourer in Belgium, judging from the average rate of wages paid throughout the country, does not appear a favourable one; but it must be remembered that the number of persons so employed is relatively limited in this country, in consequence of the considerable number of small proprietors who farm their own land, and whose families, besides those of the tenant-farmers, are generally employed in agricultural pursuits.

(f).—*M. de Laveleye.*

(1). How is it that the Swiss peasant is much more substantially fed than the Flemish? Because the former is nearly always an owner of the soil, while the latter is but too often only an occupier.

(2). If the cultivator of the land is the owner of it at the same time, his condition is a happy one, in Belgium as everywhere else, unless the plot he holds is insufficient to support him, in which case he has to eke out his existence by becoming also a tenant or labourer. But as a rule, the peasant-proprietor is well off. In the first place, he may consume the entire produce of his land, which being very large, especially in Flanders, his essential wants are amply satisfied; secondly, he is independent; having no apprehensions for the future, he need not fear being ejected from his farm, or having to pay more, in proportion as he improves the land by his labour. Yet the mode of living of the little land-owner, who

works as a peasant, differs very little from that of the tenant-farmer. His food is about the same, except that he eats bacon more frequently, killing a pig or two for his own use, and that he drinks more beer. His clothes, habits, and dwelling also resemble those of the other class, save that they denote rather easier circumstances. He lays money by to purchase land and give his farm a better outline; and it is owing to the competition of peasant-proprietors in the land-market that the value of real property is rising so rapidly. * *

(3). The situation of the small Flemish tenant-farmers is, it must be owned, rather a sad one. Owing to the shortness of their leases, they are incessantly exposed to having their rents raised, or their farms taken from them. Enjoying no security as to the future, they live in perpetual anxiety. So much does this fear of having their rents raised tell upon their minds, that they are afraid to answer any question about farming, fancying that an increase of rent would be the inevitable consequence. Rack-rents leave the small farmer barely enough to subsist on. I do not think his working capital returns 3 per cent., and he works himself like a labourer. However, he is always properly clothed, and on Sundays he dresses just like a *bourgeois*. His wife and daughters, who work barefooted during the week, are stylishly dressed on Sunday, wearing erminelines, ornaments, and flowers in their hair. * *

(4). In my work on the rural economy of Belgium I made some reflections on the indifferent condition of the Flemish peasants, from which inferences adverse to peasant proprietorship have been drawn. These conclusions are erroneous. The evil arises from the fact that there are too few small proprietors and too many small tenants among the peasantry of Flanders.

(g).—FLEMISH PEASANT PROPRIETORS AND BENGAL RYOTS. (*Mr. G. A. Grattan.*)

The Belgian rural population, especially in the Flemish provinces, appear to combine the leading qualifications requisite to success in the cultivation of small properties. They are steady, sober, and persevering, prudent and economical in their habits, and are possessed of all necessary experience in whatever relates to the management of land. They are, moreover, extremely attached to the soil on which they were born and brought up, and are especially devoted to agricultural life; and it is these qualities which have enabled them to attain great success, and a considerable degree of prosperity as small cultivators, in spite of natural disadvantages in respect of soil, except in specially favoured localities which it has required the continuous industry of many generations to overcome. Other populations might not be qualified to encounter similar obstacles with equal success.

The Bengal ryots, with all the good qualities of the prosperous small proprietors in Belgium, have all the disadvantages of the small Flemish tenant-farmers with short leases, and rents constantly raised, or holdings taken away.

V.—FRANCE—*Report by Mr. West, November 1869.*

(a). There is no very recent information respecting the amount to which rural property is mortgaged in France; but I find it is estimated

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FRANCE.

Para. 1, contd.

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FRANCE.

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that there is an annual average charge upon it of £6,000,000, or 10 per cent. on its net revenue, calculating the usual rate of interest at 6 per cent.

(b). It will be found, as a general rule, that the small proprietor accommodates himself to the circumstances of the locality which he inhabits, and that his standard of living is generally such as to show that he is, if not always contented, at least comfortable.

(c). It must be borne in mind that the "tenant holdings," properly speaking, bear a small proportion to other tenures, and that the tenant farmer, as before said, is oftentimes himself a proprietor. The mode of cultivation, standard of living, and employment of labour, therefore, will not be found to differ much as a general rule. The tenant farmer may be said to possess this advantage over the small proprietor (but this is by no means always the case), *namely*, that he is assisted by the capital of his landlord if he is an intelligent and enterprising man.

(d). What is termed the hired labourer in England corresponds in France to the "*valet de ferme*," or farm servant. They live under the same roof, and eat with the master, and, in fact, form part of his family. They are, however, comparatively few in number. Their wages now average from £10 to £12 a year for men, and from £5 to £7 for women, lodged and fed at a cost of about £10 a year per head. The day-labourer ("*journalier*") receives from 1s. to 2s. per day, and women from 6d. to 1s. They are fed at a cost of about 8d. a head per day. Female labour is much employed, more especially in the Northern Departments, and this would seem to be a natural consequence of small holdings. On an average, the wages of the female labourer are one-half those of the male. It is quite impossible to state the average number of labourers to an acre, but it is quite certain that agricultural labour is generally deficient throughout France. The migration of the country population to the great towns is daily increasing. This deficiency, and the vast municipal improvements undertaken of late years, have produced a rise of wages in the towns which attracts the peasant, and thus increases the evil so far as land is concerned. The wages of the agricultural labourer, as distinguished from the farm servant, have, in consequence of this migration to the towns, increased considerably, and he can now earn on an average 2s. 6d. and 3s. per day; in some districts much more. It may be said that the wages of the day-labourer have increased one-third, and those of the farm-servants one-half, within the last thirty years; the rate of increase varies considerably; but I should suppose that, on an average, it may be taken at one-half for the whole country.

VI.—DENMARK—*Report by Mr. G. Strachey, 18th December 1869.*

(a). On a review of the whole subject, it would seem that the reign of Christian IX is witnessing, to use the classical phrase of Machiavelli, a return "*al segno*"—a return to the times of the Valdemars, when every rood had its man. The Danish peasantry, no longer "*taillable et corvéable à merci et miséricorde*," will soon own nearly all the soil of the kingdom. The improvement of their moral and material condition may, in part, be ascribed to the repeal of the English duties on foreign produce, to the substitution of political liberty for the impotence of

enlightened despotism, and to other causes. That the conversion of *tenures* has indirectly contributed to the general result may be accepted as an ascertained fact. From the systematic contradiction of reputable testimony, I am, however, disposed to infer that the free-holder is not a better farmer than the lease-holder. There is no doubt whatever that, in Denmark, culture on the large scale is more advanced than culture on the small.

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NORWAY.

Para. 1, contd.

VII.—NORWAY—*Mr. Samuel Laing (1836).*

(a). If there be a happy class of people in Europe, it is the Norwegian *bonder*. He is the owner of his little estate; he has no feu duty or feudal service to pay to any superior; he is the king of his own land, and landlord as well as king; his poor-rate and tithes are too inconsiderable to be mentioned; his scat or land-tax is heavy, but everything he uses is in consequence so much cheaper; * * he is well lodged, has abundance of fuel, and that quantity of land in general which does not place him above the necessity of personal labour, but far above want or privation, if sickness or age should prevent him from working.

(b). The *bonder* or agricultural peasantry, each the proprietor of his own farm, occupy the country from the shore side to the hill foot, and up every valley or glen as far as corn will grow. This class is the kernel of the nation. They are in general fine athletic men, as their properties are not so large as to exempt them from work, but large enough to afford them and their households abundance, and even superfluity, of the best food. They farm, not to raise produce for sale, so much as to grow everything they eat, drink, and wear in their families. They build their own houses, make their own chairs, tables, ploughs, carts, hammers, iron-work, basket-work, and wood-work—in short, except the window glass, cast-iron ware, and pottery, everything about their houses and furniture is of their own fabrication. There is not, probably, in Europe so great a population in so happy a condition as this Norwegian yeomanry. A body of small proprietors, each with his thirty or forty acres, scarcely exists elsewhere in Europe, or, if it can be found, it is under the shadow of some more imposing body of wealthy proprietors or commercial men. Here they are the highest in the nation. The population of the few towns is only reckoned about one-eleventh of the whole, and of that, only a very small proportion can be called rich—too few to have any influence on the habits or way of thinking of the

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NORWAY.

Para. 1, contd.

and depending on his good will or on the endurance of his lease, but it is a regular little farm, keeping generally two cows and some sheep, and producing a full subsistence for a family, held for two lives. The law of the country has specially favoured this class of housemen. In default of a written agreement registered in the parish Court, the houseman is presumed to hold his possession, for his own life and that of his wife, at the rent last paid by him. He can give up his land and remove, on giving six months' notice, before the ordinary term, and is entitled to the value of the buildings put up at his own expense, which he may have left; but the landlord cannot remove him or his widow so long as the stipulated rent and work are paid. By law also a regular book should be delivered to the houseman, in which his payments are entered by the landlord, and which in case of dispute would be adjusted at the end of the year at the court of the parish. The sons and daughters of this class of housemen are the domestic servants and the ordinary labourers of the country. The territory being peopled fully up to its resources, it is only when a vacancy occurs in a houseman's place, that a young man can settle in life and marry; and his chance of obtaining the vacant house and land depends entirely upon his conduct and character. It is this check which keeps the class of servants and labourers as willing and obedient as in England or Scotland.

There are great advantages in this system of supporting and paying the labourers in husbandry. The land-owner or farmer might as well propose not to feed his horses when he has no work for them, as not to feed his labourers. By the community, and out of the general mass of its property, the agricultural labourers must be fed, whether there is work for them or not. This can only be done either by a poor rate, or by this way of giving them means to feed themselves by their own industry, and giving them a life rent property of their own to work upon, and fall back upon, in case of sickness, want of work, dearth of provision, or other general or local calamity.

It is a very common arrangement among this class in Norway, if old age, sickness, or the death of the houseman himself and the infancy of his children should prevent the occupant in possession from furnishing the stipulated rent and work, to give it over to a young man, reserving a living, with house-room and fuel, as long as the original life interest of the parties endures. Thus, the old, infirm, the widows and children, subsist without being burdensome as paupers; and the young man who works the little farm has his own living in the meantime, and the prospect of succeeding to the original life-renters.

VIII.—SWEDEN.

(a). A mean division of the land belonging to peasant farmers gives about 30 acres of tilled and 26 acres of natural grass land to each proprietor. Peasant-proprietors usually live in two-storeyed cottages, with two or three rooms on the ground-floor, and two gable-rooms on the upper-floor. * * The food of this class is substantial. * * They generally possess large stocks of clothes, which, however, are seldom used, except on Sundays and holidays. Their working attire is dirty, and seldom changed. As a class, they are decidedly above poverty, and a large proportion in comfortable circumstances.

(b). Small tenant-farmers are not numerous; and they are, as a class, decidedly inferior in solvency, independence, general circumstances and character to proprietors of even the smallest farms.

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—
PRUSSIA.
—

Para. 1, contd.

IX.—BADEN.

(a). The small peasant proprietors do not differ from the larger proprietors in respect to their dwellings, clothing, mode of living or education. Both enjoy the advantage of the same schools and instruction in their youth, and take part in the same way in all the affairs of public life. They cannot be said in any way to form a distinct class. * * There is said to be a larger proportion of active and intelligent farmers among the cow peasants, as they are called ("kuhbauern"), that is, those who employ cows for the tillage of their fields, than among the richer peasants. The cow peasants often live better and more economically than the others, especially when the latter are obliged to keep a number of servants and assistants.

(b.) There is, I believe, no doubt that since the revolution of 1848 there has been a great improvement in the houses of the peasants, in their mode of living, and in the cultivation of the soil; and their present condition must, on the whole, be regarded as favourable in respect to their means and general well-being.

(c). The tenants cultivate their farms in exactly the same way as the small proprietors do, and do not otherwise differ from them in regard to their mode and standard of living, solvency, independence, or general circumstances and character.

X.—PRUSSIA—*Report by Mr. Harriss-Gastrell.*

(a). The total amount of land debt to land value has been already estimated in this report at one-half; but from other accounts it can be estimated at two-thirds. This proportion, taking the whole kingdom, seems to hold good in the opinion of several competent persons, both for the large and small proprietors. There exists, however, a difference in the causes of incurring debts on the land. The small proprietor incurs them chiefly to secure equal portions for his children, without actually sub-dividing the land. He also incurs them, frequently, in the first instance, in order to buy his farm; and his tendency is to buy as large a farm as he can, instead of buying a smaller farm and retaining a large amount of circulating capital. In this respect he has, however, the too-frequent example of the large land-owner. On the other hand, the large proprietor seems to incur much mortgage debt in order to pay off farming debts, or to maintain a certain social position. Hence the indebtedness of the large proprietor often represents permanent loss, and is not extinguished, whereas the indebtedness of the small proprietor generally represents temporary needs, and is extinguished in course of time. Economically, the former indebtedness is often unproductive, and the latter indebtedness is generally reproductive.

(b). Though the large proprietors are few in number, the influence is considerable, and is for the most part beneficially exerted.

(c). As a class, the middle proprietors are considered to be in easy circumstances, and in many cases to be in possession of considerable

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PRUSSIA.

Para. I, contd.

savings. Relatively to the large proprietor, both they and the small proprietors are in a better position in Prussia than are in England the corresponding middle and small agricultural tenants to the large proprietors. These middle proprietors and small proprietors seem to make comparatively little use of savings banks or consols, or other investments in national moveable investments; but they lend on mortgages and promissory notes, and still continue, in not a few cases, to prefer stockings and mattresses for their bankers. Many of these proprietors have still to pay off their rent charges for the abolition of real charges and services.

(d). The mass of small proprietors are only slightly above the social level, in intelligence and habits, of the agricultural labourer, and the majority of the middle proprietors have rather less general intelligence, and much less expensive habits, than their pecuniary position would lead one to expect.

(e). The small proprietor is usually exceedingly thrifty and generally free from the three chief vices of the agricultural labourer of the North-Eastern Provinces, *viz.*, immorality, drunkenness, and thieving.

(f). The agricultural labourer lives and dies a mere day labourer. He knows he cannot change his lot. How different all would be if he saw, ever before his eyes, the opportunity of acquiring a plot of land by the exercise of economy? The proof of this is repeated in the numberless examples which in this respect are offered by the Rhine Province and other districts with minutely sub-divided land. Thousands of agricultural labourers, who formerly had not a single inch of soil, have, by a period of economy, purchased a house and a plot of tillage. In the Western Provinces the social condition of the labourers is much better than in the Eastern.

XI.—BAVARIA—*Report by Mr. Fenton, 20th January 1870.*

(a). From all the information that I have been able to collect on the subject, I believe that it may be safely affirmed in general terms that the agricultural population, that is to say, the peasant proprietors, the farm servants and the day labourers, are well fed, well clothed, and well housed; and that, in these respects, as well as in general prosperity and well-being, they may compare favourably with the rural population of any State in Europe.

(b). As a rule, the peasant proprietors of the Southern Provinces are those who own the largest quantity of land, whilst the wealthiest men of this class, as regards money, are to be found in Central Franconia. The smallest holdings are those of the Palatinate, and individually the proprietors are probably the poorest in that locality, although the province, as a whole, is the most productive and one of the richest in the kingdom.

(c). The social condition of the peasant proprietor in the Southern Provinces differs in no perceptible degree from that of the men he employs on his farm. His education, his habits, and his dress are much the same: he, in fact, remains thoroughly a peasant, the main distinction between himself and his men being that the one is richer than the other.

(d). In the Franconian Provinces and in the Palatinate, the case is very different. The peasant-proprietors in these provinces being as a general

rule superior, as a class, to the ordinary run of agricultural labourers, both as regards education and knowledge of husbandry, and in social standing.

(e). There is further a marked difference in the general character of the peasants of the Northern and Southern Provinces, inasmuch as the Franconian is frugal and economical, whilst the Bavarian of the South is fond of copious fare, and is of a somewhat reckless and extravagant turn.

(f). One important measure, which was introduced some twenty years ago, has no doubt contributed greatly towards bringing about the existing condition of the peasant-proprietors, namely, the commutation of the seignorial charges (tithes) and abolition of servitudes, which, up to that period, had weighed upon a great portion of their lands.

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AUSTRIA.

PAR. 1, contd.

XII.—AUSTRIA—*Mr. Lytton's Report, 15th January 1870.*

(a). Peasant properties are in general not heavily mortgaged. The cases in which a property is mortgaged for more than half its value are quite exceptional. A few years ago the total aggregate value of all investments on mortgage throughout the whole empire was estimated at from 15 to 1,800 millions of florins. There are no official statistics for the last two or three years. The usual rate of interest was, till quite recently, 5 per cent. But two years ago the laws against usury were abolished, and since then the rate of interest has risen to 6 per cent. But this rise in the rate of interest has been accompanied by a considerable increase in the annual number of loans upon moveable property.

(b). The small proprietor generally lives on his property. The great proprietor often resides elsewhere, and manages his estate indirectly by means of a steward. In most of the provinces, and especially in Upper and Lower Austria, the small proprietary is decidedly flourishing; the owners of small properties are able to maintain themselves in a considerable amount of comfort. Their mode of life is less expensive, less luxurious, and more primitive than that of our great tenant-farmers; but it is an easy and independent one, and they are a well-contented and well-to-do class.

(c). In Galicia, notwithstanding the natural fertility of the soil, the condition of the peasantry is by no means good. They live in wretched and flimsy tenements of wood and clay; their small properties are destitute of farm buildings; their fare is of the coarsest description; they are, in short, altogether a backward class. But I am informed by some of the great Galician proprietors that since 1848, and in consequence of the change then effected in the tenure of land, the condition of the Galician peasantry has greatly improved and is still improving.

(d). There can be no doubt that both the value of landed property and the prosperity of the whole agricultural class have been greatly augmented by the results of the great measures carried out in 1848 with regard to the land.

XIII.—RUSSIA.

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RUSSIA.

Para. 1, contd.

That the domestic powers of the patriarch, in opposing changes in the mode of life, clothing, or agriculture, must have had considerable effect in arresting the development of artificial wants, the satisfaction of which can alone incite the peasant to increased efforts of labour and to civilization, may, with great certainty, be inferred from the extraordinary increase of trade which has taken place since 1861 in articles of peasant-luxury, and principally in gayer and more civilised clothing, and that, too, during a period which has certainly not been marked by any very great increase of prosperity among the agricultural population. On the contrary, the peasantry are, by many serious, although somewhat alarmist authorities, considered to be poorer, rather than richer, since their emancipation. They cannot, in any case, be said to be much more prosperous since their new position in the State;—the rupture of their relations with the lords, on whom they formerly depended for everything, and the great increase which has taken place in the local and imperial taxation of the country, must for a time weigh heavily on their slender resources. The dissolution of the family communes is of itself sufficient to reduce the peasantry for a time to comparative indigence, for each member of the family, on leaving it, receives but a share of its small accumulations and farm stock.

The determination which the Russian peasantry has evinced to overcome their temporary difficulties is a strong evidence of talent, energy, and virtue, in the Russian people, and one of the healthiest symptoms of improvement that has resulted from the civil rights granted to them by the Emancipation Act.

2.—GENERAL OBSERVATIONS.

On the respective merits of large and small farms, and regarding the wide distinction between small farms cultivated by proprietors, and the similar farms cultivated by tenants, we have the following testimony:—

BELGIUM.

I.—BELGIUM—*Mr. Grattan.*

(a). The comparative merits and disadvantages of cultivating small holdings and of farming on a large scale forms a question which admits of much controversy, although, in reality, it has been to a certain extent prejudged. The balance of opinion in the present day in most European countries, in view of the great changes introduced into agriculture by modern science and skill, is in all probability favourable to culture on a large scale. Yet the example of Belgium gives rise to much matter for reflection, and shows that a dogmatical decision on this point ought not to be too hastily arrived at. If, as is the case in England, farming operations are carried out in a spirit of enterprise, with the expectation of turning capital to a profitable account, there is no doubt that the extent of the farms ought to correspond with the resources and means intended to be applied to their cultivation. But if, on the other hand, as in most parts of Belgium, farming is carried on upon traditional principles, as it were, according to routine, and with restricted means,

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OBSERVATIONS

BELGIUM.

Para. 2, contd.

will endeavour to improve it by constantly digging and turning up the soil; he will even labour for years to overcome its defective qualities, and render it productive; whereas land of a similar quality in the hands of a large proprietor is in general neglected, and will remain uncultivated." (See also Appendix XIV, para. 2, Section II, "Sub-division of Peasant properties.")

(e). Under the system of small proprietorship, as well as of small holdings generally, it is observed by persons who have practically studied the question, that the effect produced upon the land itself is the following:—

(1). It is better manured. Nothing capable of being turned into compost is wasted.

(2). It is kept cleaner. The artisan devotes all his leisure time to the cultivation of his small holding; and all spare hours of labour are utilised by the whole family, his wife and children assisting him in weeding and the lighter occupations connected with the land.

(3). It is more productive. When half of one crop is gathered, the other half is already planted or sown. But roots, for example, are often planted between rows of potatoes, the latter being removed by hand as often as they are wanted. Land containing 90 per cent. of silica, it is asserted, may under this system be made to produce potatoes, and even rye and other crops, by the continuous application of manures in a couple of seasons.

(f). It must be said, however, that many agricultors in this country do not approve of the extreme sub-division of land which exists in Belgium, and would prefer to see greater extension given to the system of large holdings, combined with the various appliances of modern scientific culture, which as yet are comparatively but little employed in this country. Cheapness of production, they say, can only be attained by the application of such means, sustained by large capital, or, in other words, by the introduction generally of what is termed extensive culture. Such a system is, however, of slow growth, and would necessitate very considerable changes in the conditions under which landed property is at present held in this country. Viewing matters, however, as they now exist, a very competent authority states it as his opinion that, in order to cultivate land on the most approved modern principles, farms ought in no case to fall below a minimum of 20 hectares, or about 45 acres—a limit which is, of course, exceeded by a considerable number of farms in this country. But upon inquiring from the same person whether the system of farming upon a very small scale was prejudicial to public interests, or to the land itself, the reply was that such was not the case; that small holdings could be made very profitable to their owners, and that the number and variety of crops which are produced from the land under this system could not be said to be injurious to the soil, provided the latter were sufficiently manured and in other respects judiciously managed. It would be erroneous, however, no doubt, to suppose that a system of husbandry such as that which has just been described as existing in Belgium, could be applied with advantage in all other countries indiscriminately; for, in order to meet with success, it must have been developed naturally by the force of

circumstances and events, and be, moreover, in harmony with the customs and institutions of the inhabitants, and adapted to the climate and general capabilities of the soil.

(g). The Belgian rural population, especially in the Flemish provinces, appear to combine the leading qualifications requisite to success in the cultivation of small properties. They are steady, sober, and persevering, prudent and economical in their habits, and are possessed of all necessary experience in whatever relates to the management of land. They are, moreover, extremely attached to the soil on which they were born and brought up, and are especially devoted to agricultural life; and it is these qualities which have enabled them to attain great success, and a considerable degree of prosperity as small cultivators, in spite of natural disadvantages in respect of soil (except in specially favoured localities), which it has required the continuous industry of many generations to overcome. Other populations might not be qualified to encounter similar obstacles with equal success.

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II.—PORTUGAL.

PORTUGAL.

The prevalent public opinion as to the advantages or disadvantages of the system of small proprietors in this country would appear to be that where, as is frequently the case in the north of Portugal, the sub-division of the land has been carried to excess, the result has been to lower the standard of living of the rural population, and to create an intense competition for land, which, while it stimulates the avarice of the people in acquiring it, leaves them an easy prey to usurers after it has been acquired. On the other hand, it is held that this system, here as elsewhere, under favourable circumstances, conduces to a more careful cultivation of the soil and to a larger production from it, and that it encourages among the peasant-proprietors and their families the virtues of industry, temperance, and frugality. The objections to the system might be easily overcome, if a well-considered scheme were at once adopted for bringing under cultivation the many millions of acres of land which now lie needlessly barren; while its advantages would, by the same process, be intensified and spread over a larger surface; and, as this system of tenure is especially in harmony with the highly democratic form of government which Portugal now enjoys under a constitutional monarch, and is moreover encouraged by the nature of the laws regulating the descent, division, and transfer of land, there can be little doubt that it will eventually be the predominant form of land occupation throughout Portugal.

III.—BADEN.

BADEN.

The views of statesmen and philosophers, as to the advantages of a large number of small peasant freeholders, are, as might be expected, very divergent. The prevalent public opinion is that the system of small freeholds tends to promote the greater economical and moral prosperity of the people, to raise the average standard of education, and to increase the national powers of defence and taxation.

It seems to be a generally established fact that the small farmers realise larger returns than the large farmers do from the same number

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of acres, and the result is that large properties and large farms are disappearing, and being parcelled out among a number of small farms. In fact, the price of landed properties is determined less by their intrinsic value than by the possibility of selling or letting the small holdings. Certain crops, such, for instance, as tobacco, are very unsuited to a system of "grand culture."

WURTEMBERG. IV.—WURTEMBERG—*Mr. Phipps (20th November 1869).*

(a). Writing in Germany, the small proprietors may be called well housed, well fed, and well clad, their standard of living being, however, it is true, very low. In the country, potatoes form the staple food for the poor, and but little meat is consumed; the poorest, however, are never without rye-bread. In general, farinaceous substances are used for food. * * The houses are generally large, solidly built, and very rarely, in the case of small proprietors, isolated; but in villages often at some little distance from the respective properties.

(b). In estimating the standard of living, and the general circumstances of the small proprietors, it must be borne in mind that, in Swabia, parts of the Black Forest, and Danube district, the farms are of a superior class; they and their families live habitually on a high standard, their clothing is of good quality, and their daughters may be seen wearing silk dresses.

(c). Wurtemberg is remarkable as the country where subdivision of land is carried to the greatest extreme, and the sad experience of recent years of scarcity has led public opinion to consider the enormous number of small independent cultivators as the main cause of such misfortunes. One of the most distinguished writers on this subject argues, however, that the statistics give a false and exaggerated idea of the case. Allowing that there are 150,000 independent farmers, in the actual acceptance of the term, with farms of on an average 30 acres each, it is declared that the existence of these 180,000 small proprietors of land is attendant with no evil result. The possession by almost every family, among the rural population, of a small piece of land from which they derive subsistence for their stock, and vegetables for their domestic consumption, does not, it is declared, have any bearing on the question of small proprietorship or subdivision of the soil, but is only a peculiarity of social existence.

(d). As far as the class of really small peasant cultivators are concerned, there is no doubt that the evils of small proprietorship are felt very sensibly. In the Neckar, and part of the Black Forest districts, there is hardly a commune without a number of dwarf properties, many where there are no middle-sized properties at all, and where the few properties possessing any sort of vitality are in the minority. In many communes, owing to want of sufficient area or the poverty of the soil, the inhabitants are unable to obtain a livelihood from agriculture, and the conditions of obtaining a livelihood from industrial pursuits are wanting, and consequently a redundancy of population prevails. Speaking generally, however, the evils of small holdings are not so sensibly felt in Wurtemberg as for instance in Ireland. *

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(e). The evil of small properties is also to some extent modified in Wurtemberg by so many of the small cultivators living together in one village, which enables them to aid each other in the work of their farms, which introduces to some extent the co-operative principle, and gives them the advantage of making use of at least the elementary descriptions of machinery which have as yet been introduced in the country. It may finally be stated that public opinion has undergone considerable change of late years as to the advantages or disadvantages of the sub-division of property, especially since the competition of Hungarian corn has taken away the monopoly which South Germany formerly possessed of the Swiss market, and since its increased importation by the greater millers.

(f). The political economists in this country are in general of opinion that small proprietors, who complete their means of livelihood by industrial pursuits, are the class which it is most desirable to encourage; whereas formerly agriculture on a large scale was considered the most profitable. The laws in themselves, by the equal division of paternal property, favour the perpetuation of small proprietors, except in the districts added to this kingdom in 1803, where, owing to the relative inferior fertility of the land, large farms are a necessity, and where the sub-division of properties would, owing to the absence of industrial pursuits, be the ruin of the whole district.

WURTEMBERG—*Mr. Gordon (20th November 1869).*

(g). With regard to the state of public opinion as to the advantages or disadvantages of small proprietorships, I am inclined, from such inquiries as I have made, to agree with Mr. Phipps that the former are generally considered as prevailing over the latter. As one influential authority in this direction, I may instance Baron Varnbüler, who is himself a considerable landed proprietor for this country, but who justifies his opinion on the point (which he also printed in 1846) by saying that, admitting the system of sub-division of property to occasion increased expense of cultivation, it renders, notwithstanding, the land absolutely more productive, inasmuch as the small proprietor works his piece of ground more with a will than he would do as a tenant or labourer; tends it more carefully; works early and late at hours he would never do under another system; and, finally, takes a higher and better position as a member of society, and feels himself as owner of his acre or two of land, or less, a more important individual—as weighing more in the body politic—than he would do, for instance, as holding to his name in the savings bank several hundred or more of florins than he might otherwise have laid by from hired labour or industrial pursuits.

(h). I think it may prove interesting to add the following translation of the passage by which Baron Varnbüler sums up his remarks on this subject in the pamphlet to which I have referred: “Any one who has had opportunities of intercourse with the people, will recollect how, among the poorer classes, industry, good faith, economy, moral behaviour, are accustomed to attach themselves to the acquisition of a small property; how the house-servant, or farm labourer, or small mechanic, usually doubles all his efforts, from the moment when he has obtained the

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right of calling a small plot of land his own; as also how he seems to place all his happiness in maintaining, extending, and tending this possession, and how incredibly large are the returns which, in addition to his other labour, he is enabled to extract therefrom. Let it not be forgotten either, that all these small proprietors are bound to the course of order by this, it is true, absolutely small but relatively large pledge. Finally, let those parts of Wurtemberg where this sub-division of land is greatest, be examined on the spot, in order to convince the inquirer of the high degree of productiveness to which the ground is brought in those quarters, and for what a mass of wants it is made there to suffice, before he even thinks of disturbing this source of industry."

(2). With all this, however, Baron Varnbüler guards himself carefully against being supposed to advocate the sub-division of property abstractedly, or to condemn large properties. His pamphlet, from which the above is extracted, is on the necessity of further legislation for the furtherance of industry in general; and he would be understood only to contend that the sub-division, and power of further and continued sub-division of property, is even, with its acknowledged disadvantages, at present the smaller, and indeed a necessary evil—at all events, a lesser one than their legal restriction would be—and that the natural correction for it lies in the development of industrial activity.

PRUSSIA.

V.—PRUSSIA.

The prevalent public opinion is decidedly in favour of peasant proprietorship. It is also generally in favour of small proprietorship, of which the advantages are held to outweigh the disadvantages. The conversion of all feudal tenures and relations into absolute ownership and freedom is considered to have been the only possible solution of the problem at the beginning of this century, which could have enabled Prussia to increase so rapidly her national wealth and the welfare of her people. For this Prussia will ever be grateful to the many sharers in the Stein-Hardenberg legislation, who through many difficulties have in that manner solved the problem.

The influence of the large land-owners has not been diminished by the Stein-Hardenberg legislation. On the contrary, there is little dissent from the opinion that the relations of the large land-owner with the population of his district have been thereby so improved that his influence is now greater than it formerly was. This is easy to understand; for his natural influence, as representing the intelligence of the district, has far more play when the surrounding population have no interest in connection with him antagonistic to his own. The powers for good of the large land-owner, and his exercise of a legitimate and natural influence, should be encouraged.

BREMEN.

VI.—BREMEN.

The agricultural population is, on the whole, very well satisfied with the present state of things.

VII.—SAXE COBURG GOTHA.

The small proprietors of the middle class of agriculturists are greatly respected. A number of substantial land-owners cannot fail to be a great advantage to a country where they purchase many articles for their own use and consumption, and thereby further trade and industry. The public revenue is a gainer by them, as the taxes they pay are sure and considerable. They are altogether respectable and very industrious people, and not disposed to take any part in acts of opposition.

VIII.—FRANCE.

There is little or no emigration to foreign countries, but the great towns absorb the labouring population; and this, as regards agricultural labour, has the same effect. * * The prevalent public opinion as to the advantages or disadvantages of the tenure of land by small proprietors is decidedly that it has been advantageous to the production of the soil, and has tended to the improvement of the material condition of the agricultural population. The conclusion arrived at in the report which accompanies the "*Enquête Agricole*," and by M. deLavergne, is that the division of the land has been attended with great benefit, both as regards the production of the soil and the condition of the rural population; but that at the same time an unlimited partition of the small properties, as they already exist, would destroy this benefit, and be productive of serious evil.

IX.—AUSTRIA.

Between the relative social, intellectual, and economical conditions of the great and small proprietors, however, there is an enormous difference. Whilst, on the one hand, there is undoubtedly a marked improvement in the social and intellectual standard of the Austrian peasantry since the emancipation of it in 1848, and whilst the general value of the whole productive soil of the empire has so greatly improved that the market price of land has, in most provinces, risen more than 100 per cent. since that period; on the other hand, there can be no doubt whatever that every impulse in the way of agricultural improvement has come, and continues to come, exclusively from the great land-owners. It is to them alone that the introduction of improved machinery, manure, drainage, breeds, &c., is owing, even in cases where such improvements have been successfully adopted by the small proprietors. In this respect the peasantry have shown no initiative. My personal impression is, that the two classes have mutually benefited, and greatly benefited, by their co-existence and juxta-position, and that the total annihilation of their class would involve a material disadvantage to the remaining one. But it is a notorious and striking fact that, in this most agricultural empire, agriculture flourishes only in those provinces where great estates and great land-owners prevail, and that, in all those parts of the country where the peasant-proprietor predominates, the state of agriculture is singularly rude and primitive.

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X.—MR. SAMUEL LAING.

(a).—*Notes of a Traveller (1812).*

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(1). If we listen to the large farmer, the scientific agriculturist, the political economist, good farming must perish with large farms. The very idea that good farming can exist, unless on large farms cultivated with great capital, they hold to be absurd. Draining, manuring, economical arrangements, clearing the land, regular rotations, valuable stock and implements,—all belong exclusively to large farms, worked by large capitals and hired labour. This reads very well: but if we raise our eyes from their books to their fields, and coolly compare what we see in the best districts farmed in large farms with what we see in the best districts farmed with small farms, we see, and there is no blinking the fact, crops on the ground in Flanders, East Friesland, Holstein—in short, on the whole line—of the arable land of equal quality—of the Continent, from the Sound to Calais, than we see on the line of British coast opposite to this line, and in the same latitudes, from the Firth-of-Forth all round to Dover. Minute labour on small portions of arable ground give, evidently, in equal soils and climate, a superior productiveness where these small portions belong in property, as in Flanders, Holland, Friesland, and Ditmarsh in Holstein, to the farmer. It is not pretended by our agricultural writers that our large farmers, even in Berwickshire, Roxburghshire, or the Lothians, approach to the garden-like cultivation, attention to the manures, drainage, and clean state of the land, or in productiveness from a small space of soil not originally rich, which distinguish the small farmers of Flanders and their system. In the best farmed parish in Scotland or England, more land is wasted in the corners and borders of the fields of large farms, in the roads through them, unnecessarily wide because they are bad, and bad because they are wide, in neglected commons, waste spots, useless belts and clumps of sorry trees, and such unproductive areas as would maintain the poor of the parish if they were all laid together and cultivated. But large capital applied to farming is of course only applied to the very best of the soils of a country. It cannot touch the small unproductive spots which require more time and labour to fertilise them than is consistent with a quick return of capital. But although hired time and labour cannot be applied beneficially to such cultivation, the owner's own time and labour may. He is working for no higher returns at first from his land than a bare living. But in the course of generations, fertility and value are produced, a better living, and even very improved processes of husbandry, are attained. Furrow draining, stall feeding all summer, liquid manures, are universal in the husbandry of small farms of Flanders, Lombardy, and Switzerland. Our most improving districts under large farms are but beginning to adopt them. Dairy husbandry even, and the manufacture of the largest cheeses, by the co-operation of many small farmers; the mutual assurance of property against fire and hailstorms, by the combination of small farmers; the most scientific and expensive of all agricultural operations in modern times; the manufacture of beet-root sugar; the supply of the European market with flax and hemp by the husbandry of small farmers; the abundance of legumes, fruits, poultry, in

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the usual diet of the lowest classes abroad, and the total want of such variety at the tables even of our middle classes, and this variety and abundance essentially connected with the husbandry of small farmers,—all these are features in the system of the occupation of a country by small proprietor farmers, which must make the inquirer pause before he admits the dogma of our land doctors at home, that large farms worked by hired labour and great capital can alone bring out the greatest productiveness of the soil, and furnish the greatest supply of the necessities and conveniences of life to the inhabitants of a country. * * *

(2). The traveller who looks without prejudice or preconceived opinion at the state of the crops on the Continent wherever the small farming and small proprietary system is predominant, at the abundance and variety of food afforded by it to the rest of the population, and at the way of living, the cheapness, the physical comforts in diet and lodging of the working classes, and the whole social effect of the occupancy of land in small farms, will come to this conclusion, *viz.*, that the large farm money-rent system, which is almost entirely confined to Britain, is a kind of political establishment, the growth of artificial arrangements of society, and fostered by the classes it supports; but is in reality not essential to good husbandry, or to the utmost agricultural productiveness of a country, or the utmost well-being of the inhabitants. This establishment could not subsist but by protective legislation, and must give way when it comes in competition with agricultural production under the more natural small-farm system. * * *

(3). The quantity actually raised on the great scale, as in a whole country, undoubtedly is greatest on the system of small farms under a garden-like cultivation. The densest populations in Europe are those of Flanders and of Lombardy, and they are subsisted in comfort by land cultivated by small farmers. The experience of half a century in France proves that by the occupation of the country under small working farmers, the land is producing one-third more food, and supporting a population one-third greater than it did when it was possessed in larger masses. America also proves that the land in the hands of small working farmers administers all that a people of similar tastes and habits to our own require, and far more abundantly than our system. "There is much food," says Solomon, "in the tillage of the poor." There is much sound political economy to be found in Solomon's Proverbs.

(4). A return to the small farm system, whether it be for good or for evil, must inevitably, although gradually, follow the abolition of the Corn Laws. Farming in our own country must inevitably follow the cheaper modes of production with which it is brought into competition, for it is the law of all production that cheapness commands both the markets and the modes of producing. * * *

(5). The maize, or Indian-corn, is both physically and morally the equivalent among the populations of the south to the potatoe among those of the north. * * The cultivation of maize acts upon the amount and condition of the population, on their numbers and habits, precisely as that of potatoes. The moral results have been the same from both. Where the land is not the property of the cultivators, but of a nobility, as in the Sardinian, Neapolitan, and Papal States, the cheap and inferior

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but plentiful food, in proportion to the land and labour bestowed on its production, has brought into existence a great population miserably ill-off. The difference of value between their inferior food of maize and the value of other kinds of food has only gone into the pockets of their land-owners and their employers; their condition has been deteriorated by a cheaper food, increasing the quantity, and thereby reducing the value of labour to a rate equivalent to a subsistence upon an inferior and cheaper diet. Where the land, again, is the property of the labourers themselves, as in Switzerland, in Tuscany, in France, the cheaper and inferior food leaves them more of a superior, higher-priced food for market or more land to produce marketable provisions from, and what they save in their diet goes into their purse. Thus the very same cause, that is, cheap articles of diet, produces thrifty, active, industrious habits among the Swiss, Tuscan, and French peasants, and lazy, trifling, lazzarone habits among the labourers of the Neapolitan, Papal, and Sardinian States. It is the possession of property that regulates the standard of living in a country as in a single household, and fixes the general ideas and habits with regard to the necessary and suitable diet, lodging, and clothing, and this standard regulates the wages of labour. People who have at home some kind of property to apply their labour to, will not sell their labour for wages that do not afford them a better diet than potatoes or maize, although in earning for themselves they may live very much on potatoes and maize. We are often surprised, in travelling on the Continent, to hear of a rate of day's wages very high considering the abundance and cheapness of food. It is want of the necessity or inclination to take work that makes day labour scarce, and considering the price of provisions, dear in many parts of the Continent, where property in land is widely diffused among the people.

(b).—*Observations in Europe (1850).*

(1). In Flanders, Holland, Friesland, about the estuaries of the Scheldt, Maes, Rhine, Ems, Weser, Elbe, and Eyder, in a great part of Westphalia and other districts of Germany, in Denmark, Sweden, and Norway, and in the south of Europe, in Switzerland, the Tyrol, Lombardy, and Tuscany, the peasants have, from very early times, been the proprietors of a great proportion of the land. France and Prussia have, in our times, been added¹ to the countries in which the land is divided into small estates of working peasant proprietors. In any country of Europe, under whatever form of government, however remotely and indirectly affected by the wars and convulsions of the French Revolution, and however little the laws, institutions and spirit of the government may as yet be in accordance with this social state of people, the tendency during this century has been to the division and distribution of the land into small estates of a working peasant proprietary—not to its aggregation into large estates of a nobility and gentry. This has been the real revolution in Europe. The only exception is Great Britain. The tendency with us during the present century has been directly the reverse.

¹ Since Mr. Laing wrote, Russia and Austria have been added to the list.

It has been to aggregate small estates into large, and in Scotland and a great part of England, to aggregate even small tenant occupancies into large farms.

(2). The clean state of the crops here, in Flanders—not a weed in a mile of country, for they are all hand-weeded out of the land, and applied for fodder or manure—the careful digging of every corner which the plough cannot reach, circles round single trees close up to the stem, being all dug and under crop of some kind, show that the stock of people to do all this minute hand-work must be very much greater than the land employs with us. The rent-paying farmer, on a nineteen years' lease, could not afford eighteen pence or two shillings a day of wages for doing such work, because it never could make here any adequate return. But to the owner of the soil, it is worth doing such work by his own and his family's labour at odd hours, because it is adding to the perpetual fertility and value of his own property. He may apparently be working for a less return than ordinary day's wages; and, it may be, is making but a bare subsistence, worse than that of a hired farm servant, or a labourer on day's wages on a large farm; but in reality his earnings are greater than those of any hired servant or labourer, however well paid, because they are invested in the improvement of his own land, and in the continual advance of his own condition by its increasing fertility, in consequence of his labour bestowed on it. His piece of land is to him his savings bank, in which the value of his labour is hoarded up, to be repaid to him at a future day, and secured to his family after him. He begins with a potatoe-bed on the edge of a rough barren piece of land, and with the miserable diet it affords him; but, the land being his own, he gets on by the application of his labour to it, to crops of rye, wheat, flax, sonu grasses, and to the comforts of a civilised subsistence.

(3). Where land, whether it be a single farm, a district or a whole country, has not merely to produce food, fuel, clothing, lodging, in short, subsistence in a civilised way to those employed on it, but also a rent to great proprietors, and profit to large farmers, the tenants of the land-owners, it is evident that only the land of the richest quality can be let for cultivation and can afford employment. What cannot afford rent to the landlord and profit to the tenant, as well as a subsistence to the labourer, cannot be taken into cultivation at all, until the better sort of land becomes so scarce that the inferior must be resorted to, and from the scarcity and consequent dearness of the better can afford a rent and profit also. This appears to be the glimmering of meaning in the foggy theory of rent given us by our great political economists. They forget that God Almighty did not create the land for the purpose of paying rents to gentlemen and profits to gentleman farmers, but to subsist mankind by their labour upon it; and that a very large proportion of the land of this world, which never could be made to feed the labourer on it, and to yield besides a surplus of produce affording rent and profits to another class, could very well subsist the labourer, and in a comfortable civilised way too, if that were all it had to do. It could produce to them food, fuel, clothing, lodging, or the equivalent to the requirements of a civilised subsistence, but not rent and profit. Rent and profit, over and above their own civilised subsistence, is only applied to such land is not thrown away or misapplied; it is a waste.

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every year to national wealth and well being, although not producing rent and profits, because it is gradually fertilizing the soil of the country, is feeding the population of small land-owners working upon it, and supporting them in a civilised and assured mode of subsistence, which is gradually improving with the improvement of the soil. * *

(4). The traveller who has an eye to the agricultural state of other countries compared to that of his own, cannot fail to observe that the land of the Continent is cultivated up to its capability of cultivation and of employing its inhabitants much more closely than the land of England or Scotland. Whatever admits of being ploughed or dug is cultivated. The land may not be so productively and profitably cultivated as in England or Scotland, although this assumption of superior productiveness on equal quality of soils may be reasonably questioned, but it is more generally cultivated. All land that is at all capable of returning a crop, should it only be a return of the seed and of the labourer's subsistence, is under culture. Woods and groves planted and preserved for ornament, parks, pleasure grounds, lawns, shrubberies, old grass fields of excellent soil producing only crops for luxury, such as pasture and hay for the finer breeds of horses, village greens, commons, lanes between fields, waste corners, and patches outside of the fences or along the roads, hedges, ditches, banks, walls—all which together occupy perhaps as much land in England as the land under crops of grain—are very rare on the Continent. The plough and the spade work up to the door-steps of the most respectable country mansion, and to the gates of the most considerable cities. There are, no doubt, vast tracts of land on the Continent too sterile and thin of soil to admit of culture at all, even with the spade of a peasant-proprietor working on it for his own subsistence only; but whatever land affords a reasonable hope of reproducing the seed and food that must be expended on its culture, should it only be a crop of rye (a grain that puts up with the poorest quality of soil), seems to be occupied and cultivated. The land of a quality that never could produce rent to a landlord, and profit and a return of his capital to the tenant, is not, as in England and Scotland, lying waste and unused, but is cultivated for the mere return of the seed and subsistence of the labouring cultivator. This is the natural consequence of the small estate occupancy of the land, and of equal inheritance. The want of manufacturing employment has thrown all labour upon the land, and the land is consequently cultivated closely up to its capability of culture. The land with us is cultivated only up to its capability of profitable production to the landlord and tenant. Rent and profits set limits to cultivation in Britain; but positive sterility, the utter incapability of the soil to reproduce the seed and subsistence of the labourer working on it as proprietor for his own living, seem the only limit to cultivation abroad. * *

(5). In Scotland it is estimated that more than one-half of the land susceptible of cultivation is not cultivated; that of the $11\frac{1}{2}$ millions of acres capable of cultivation, $5\frac{1}{2}$ millions only are cultivated, and 6 millions are not cultivated. And why is this larger half not cultivated in a country of which the agricultural system and agricultural improvements are held up as a model? Simply because it would

not repay the expense of enclosing, draining, building houses and offices, and bringing it into the state of rent-paying arable land. It is not of a quality to afford a rent to a landlord, profit to a tenant for his capital and skill, and to replace the outlay of money in its improvement, within any period of a lease. Yet such land would snbsist a population of small proprietors working and living upon it. Having neither rent to a landlord, nor profit over and above their subsistence to produce, they would earn a subsistence, poor and scanty no doubt at first, but gradually improving and increasing with the improvement of the soil by their labour on it. This uncultivated land could employ and snbsist as great a body of agricultural labourers, if they were only owners of the land, as all the agricultural labourers employed and subsisted by the other half that is at present cultivated and paying rent. In England, as in Scotland, as much land in every rural parish is lying useless, in wastes, commons, neglected patches, lanes not required, corners of fields, sides of roads, and such uncultivated spots, as would keep and endow all the poor of the parish. Of the cultivated land in England, how much is producing little or no employment or subsistence for the population, but is merely under crops of luxury, such as hay and pasture for the pleasure-horses of the upper classes! How much is laid out in parks, lawns, and old grass-fields pastured over by cattle, horses, and sheep roaming at large, and returning no manure of any value to the farmer for their food! And how much arable land, for the want of that very manure, is in naked fallow, bearing no crop, but resting, as it is called, that is, exhausted and waiting for its turn to receive manure! Over-population is only relative to under-production; consequent on these artificial or conventional circumstances in the use and distribution of land.

(c).—*Denmark.*

Copenhagen has more palaces in her streets and squares than ships in her harbour. The extreme state of pupilage in which this people is kept, not only extinguishes all industry and activity, but from the host of functionaries who must be employed where a government attempts to do everything, and regulates and provides in matters which a people can best manage for themselves, it consumes all their capital, and leaves them nothing to be active and industrious with. * * The total number thus supported by the 1,223,807 individuals who form the population of Denmark is 121,444 persons; or every 10 individuals have to support 1 who is not engaged in productive industry, but is a public functionary or a pauper living upon their productive industry. * * If to these perpetual drains upon the earnings of the industrious in the middle and lower classes be added the enormous waste of the capital and tenure of the country in palaces, gardens, shows, military duties, and such objects as reproduce nothing, it is not extraordinary that the people are sunk in poverty and sloth, although occupying the richest soil and most advantageous situation in the north of Europe.

MR. SAMUEL LAING (*Journal of a Residence in Norway*).

It is vastly better, however, in another respect; they have no rents to pay, being the owners of the farms they cultivate. Here are the

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highland glens without the highland lands. It is, I am aware, a favourite and constant observation of our agricultural writers that these small proprietors make the worst farmers. It may be so; but a population may be in a wretched condition, although their country is very well farmed, or they may be happy although bad cultivators. The country around Rome was certainly better farmed under the Romans than it is now under the Pope. Was it a happier country then, when all the agricultural labourers were slaves working in chains, and driven to and from their work like beasts of burden? Our West Indian colonies were better farmed under the slave system, especially when fresh slaves could be imported from Africa, than probably they can ever be by free labour. Which is the happiest state of the population? Good farming is a phrase composed of two words which have no more application to the happiness or well-being of a people than good weaving or good iron-founding. The producer of grain who is working for himself only, who is owner of his land, and has not a third of its produce to pay as rent, can afford to be a worse farmer, by one-third, than a tenant, and is notwithstanding in a preferable condition. Our agricultural writers tell us, indeed, that labourers in agriculture are much better off as farm servants than they would be as small proprietors. We have only the master's word for this. Ask the servant. The colonists told us the same thing of their slaves. If property is a good and desirable thing, I suspect that the very smallest quantity of it is good and desirable; and that the state of society in which it is most widely diffused is the best constituted. * * The common sense of the majority of mankind would, I apprehend, in spite of the most curious and subtle argument, decide that the forty families in these two highland glens, each possessing and living in its own little spot of ground, and farming well or ill as the case may be, are in a better and happier state, and form a more rationally constituted society, than if the whole belonged to one of these families (and it would be no great estate), while the other thirty more families were tenants and farm servants. Add a few ciphers to the numbers, and you have Ireland, Scotland, England, with their millions of people, their soil possessed by a few thousand proprietors. It is impossible such a constitution of civil society can long exist without some great convulsion unless mankind be retrograding to the state in which the feudal law of primogeniture originated.

XI.—MR. J. S. MILL (*Principles of Political Economy, Book II, Chapter VII*).

(a). Those who have seen only one country of peasant proprietors, always think the inhabitants of that country the most industrious in the world. There is as little doubt among observers with what feature in the condition of the peasantry this pre-eminent industry is connected. It is the magic of property, which, in the words of Arthur Young, “turns sand into gold.”

(b). The idea of property, however, does not necessarily imply that there should be no rent, any more than that there should be no taxes. It merely implies that the rent should be a fixed charge, not liable to be raised against the possessor by his own improvements, or by the will of a

landlord. A tenant at a quit-rent is, to all intents and purposes, a proprietor; a copy-holder is not less so than a free-holder. What is wanted is permanent possession on fixed terms: "Give a man the secure possession of a bleak rock, and he will turn it into a garden; give him a nine years' lease of a garden and he will convert it into a desert."

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XII.—SMALL PROPRIETORS AND COTTIERS.

(a).—MR. S. LAING (*Observations on the State of Europe, 1850*).

(1). We may give greater fertility to the soil by more careful and skilful cultivation of it, and thus increase the quantity of its marketable produce. This is unquestionably adding to the wealth of a nation—this improvement of its soil. The only mistake here is, that it is assumed, without proof, and without reference to the husbandry of other countries, that this improvement can only be effected by large capitals applied to large farms, and that farms of from three or four hundred a year of rent to a thousand or fifteen hundred a year must, in the nature of things, be better found—better ploughed, drained, manured, cleaned, and cultivated—than the same land would be in small farms held in property by small farmers. Now, this assumption is not only not proved, but is directly contradicted by the garden-like cultivation of all this country, of Flanders, and of Belgium, Holland, Friesland, Holstein, and wheresoever small farms in the hands of a class of working peasant proprietors cover the face of the land. It stands, indeed, to reason that no large farm (suppose one, for instance, of 500 acres) can, by dint of capital and hired labour, be made literally a garden in productiveness, in the cropping, cleaning, weeding, manuring, and cultivation of it; but the five hundred acres could be made into a hundred gardens of five acres each, and each dug, raked, manured, weeded, and cropped, by the family it supports, and each as productive as any kitchen garden or market garden,—a productiveness which no large farm even can approach, because, as stated before, hired labour could not be applied to such minute cultivation of ordinary crops, and leave a surplus for rent and profits to a landlord and tenant, besides the hire or subsistence of the labourer.

(2). The wretched cultivation of small tenant farms in Ireland and in Scotland before the small tenants were ejected and the land brought into the large farm occupancy, is generally adduced as proof undeniable that small farms are incompatible with good husbandry, and with bringing the land of a country to its utmost productiveness and fertility. But it only proves that the tenure of a small farm, held from year to year, or even for a term of years, at a heavy rent, and under services of time and labour to the landlord, tacksman, or middleman, is essentially different from that of a small farm held in property by the farmer himself, and for which he has neither rent nor services to pay; and that this difference is a bar to all industry or improvement by the class of small tenant farmers in Ireland or Scotland, because rent rising, in proportion to any improvement made, at the end of each lease or term of years, would swallow up all that industry might produce. The small tenant-farmer, in fact, would be only working against

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himself, and for the purpose of raising his own rent, and deteriorating his own condition at a future day by his industry and improvements. It only proves the essential difference in the condition of the two classes of small peasant-proprietors and small peasant-tenants; and that the moral stimulus of giving his own time and labour to the improvement of his own property will make the peasant-proprietor cultivate and improve land which cannot afford rent and profit to a landlord and tenant, although it yields a subsistence improving yearly to himself as labourer; and that the want of this moral stimulus of a property in his land and labour makes the peasant-tenants, on the finest soils in Ireland and Scotland, slothful, unimproving, and starving. This essential difference is very strikingly brought out in Ireland and Flanders. The peasant-tenants of small farms in Ireland are sunk in misery. The peasant-proprietors in Flanders, on soil originally inferior, working on their own little farms on their own account, from generation to generation, have brought them to a garden-like fertility and productiveness, and have made the whole face of the country a garden and a pattern to Europe. Is there any reasonable ground for drawing a sweeping conclusion against the occupaney of a country by small peasant proprietary from the condition or husbandry of a class so entirely different in their circumstances, motives of action, and social position, as the small peasant-tenants of Ireland or Scotland.

(b).—M. DE LAVELEYE (*Cobden Club Essays*).

Notwithstanding all the arguments of the most distinguished economists in England, especially Mr. John Stuart Mill, to the contrary, peasant property in land seems still to be regarded there as synonymous with wretched cultivation and large estates with rich and improved farming. The reason is obvious: the English are accustomed to compare the farming of their own country with that of Ireland. In fact, however, both England and Ireland are exceptions; one on the right, the other on the wrong side. In England there exists a class of well-to-do and intelligent farmers such as are not to be found anywhere else. In Ireland, on the contrary, there is no peasant property, but only large estates in combination with small tenure, often with a middleman between the landlord and the cultivator—of all agrarian systems the most wretched. Added to this, many centuries of oppression and misgovernment made the Irish people more improvident than the inhabitants of any other country in the civilised world; thus, what with a land system of the worst kind, and the general condition of the country, the case of Ireland is surely an exceptional one. All over the Continent of Europe there is more live-stock kept, more capital owned, more produce and income yielded, by small farms than large estates.

XIII.—MR. J. MACDONELL'S SURVEY OF POLITICAL ECONOMY.

(a). The question of large or small farms is not between large and small properties, for large properties do not ensure large farms, but rather between large farms on the one hand, and small farms and peasant properties on the other; the real antagonism is between *extensive* and *intensive* culture; any other contrast is apt to be a false one. The

Romans were acquainted with the subject, for the contrast between Latium, densely peopled under a *regime* of small farmers, and depopulated under that which succeeded it, could not fail to strike them, and Pliny has embalmed his opinion of the change in the memorable phrase "large farms ruined Italy."

(b). In this country the subject has called forth swarms of books and pamphlets since the days of Arthur Young; and no continental economist thinks that he has done his duty until he has returned a verdict for *la petite culture*, or *la grande culture*. The controversy has been barren and profitless, the discrepancies of opinion needlessly great, because the two litigants have employed entirely different tests of what is right and proper. There are three questions to be considered: What is ideally the best economical state for the present; what is the best economical state practicable; and what is the best state morally. And these three have been confounded.

(c). If purely present economical considerations are in view, and if the question be asked which of the two systems now produces the greatest results with the least expenditure of labour, political economy has said the last word, and the advantage of large farming over small farming ought long ago to have been acknowledged. For, in the first place, division of labour is possible to any extent only in the former; and though division of labour is not so profitable or practicable on a farm as in a manufactory, the principle does not fail in the former: it only does not succeed so well as in the latter. In the next place, production on a large scale in farming is more economical, just as in manufacturing, though the advantages are not so great in the one as in the other; there is a saving in management, in fences, in buildings, &c. * *

(d). And as to the argument so much insisted on by Mr. Mill and the advocates of small farmers in general, that they will expend almost "super-human industry" on the land—which is, of course, true only where they are the proprietors—it must be remembered that every increase of produce is obtained by a more than proportional increase of labour; that is to say, that after a certain point, doubling the labour will not double the produce, but perhaps may increase it merely one-fourth or one-eighth. Consequently, *intensive* culture is a comparative waste of labour, so long as *extensive* culture is possible.

(e). And therefore, if purely economical considerations, having regard only to the immediate present, are to guide us, we should defer cultivating all Europe as Belgium is cultivated, until all Europe is peopled as Belgium. Until that period comes, labour so expended will be mispent, in an economical point of view, for it might have been expended elsewhere to more advantage.

(f). But it is not enough to know which system will yield the greatest net produce with the least expense. That is not decisive of the whole merits of the two systems; a further and equally important question lies behind—under which system will the best race of men be bred and live? Under which will the average standard of morality, comfort, and happiness

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¹ But it is the extra labour of one who cheerfully bestows it on the property which gives him meat and drink, and who would not bestow it for wages on the large farm system. The peasant property is a savings bank for extra labour which that property calls forth, and which nothing else can elicit.

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be highest? And the advocates of *la petite culture* rest their case on a more solid basis when they assert that small farmers, whenever they have owned the land they farmed, have been marked by sobriety of life, prudence, and all the work-a-day virtues, and that they have been the stablest pillars of support to those nations whose good fortune it has been to possess them. Property, as has been already observed, has a humanising effect; until men have acquired some property, they are not tamed or domesticated; and real civilisation grows as the number of those destitute of it decreases. It is not, therefore, a meaningless coincidence that those countries in which peasant proprietors have been most numerous have been the chosen abodes of patriotism. Stübner (quoted by Mr. Mill) says: "Wherever you find hereditary farmers or small proprietors, there you find order and honesty," and with similarity of language as well as of opinion, Simondî has observed: "Wherever are found peasant proprietors are also found that ease, that security, that independence, that confidence in the future, which assure at the same time happiness and virtue." The manly worth of the "statesman" of England is not wholly a figment of poetry or an invention of romance. Slow to change, those small proprietors have often been the saviours of order. When all else has rocked in France, they have sometimes been immobile; and now, as the enemies of revolution avow, the greatest security against its repetition is the existence of a vast legion of peasant proprietors interested in the preservation of order. Plant the argument for small proprietors on these moral grounds,—say that a long review of history, and a broad survey of many countries, attest that peasant proprietors have displayed singular worth of character, and that, on the other hand, large farming brings as an accompaniment a population such as the hinds of England, rude, unthinking, and ignorant—and the argument is not easily to be shaken; but do not say that small farming is, in a theoretical point of view, the best system; do not say that general want of capital, general isolation, general inability to try new methods, no division of employment, and a system which produces large results only when a man considers his labour and time of little worth, are the conditions in which the utmost wealth is at present produced with the least possible expenditure of labour.

(g). These favourable opinions of the salutary effects of small farms on the general morals of the people, do not hold good when the small farmers do not possess the land they till, or hold it by a fixed tenure or for a long term of years; for experience and presumption alike assert that the cottier system of cultivation is morally and economically the worst that circumstances or man could devise. There the fate of the farmer is to scrape painfully together the means of a miserable livelihood, to slide into debt, penury, disaffection, and in the end perhaps into crime; and Ireland is a grand illustration and warning of the consequences of such a system long and generally pursued. It is true that the dense population of Ireland has intensified the evils that are to be ascribed to the system, and that several provinces of Belgium—the famous Pays de Waes, for example—attest that, among a people well educated and accustomed to a comfortable style of living, and a standard set by neighbouring small proprietors, the cottier system may be productive of and certainly accompanied by, comfort. But it can rarely happen,

at all events where the land is let by competition, that the cottier's lot can be other than hard, barren of enjoyment and of hope.

(A). Though large farms are abstractedly considered the best economical state, it does not follow that they should be universally adopted in preference to small farms, seeing the fate of the bulk of the population may be worse under the former than the latter. And I shall now point out a few other considerations which should cause hesitation in recommending a universal spread of large farms.

(i). Much heed and respect should be paid to the custom of any country, for if the custom has grown up spontaneously and has not been imposed by force, it is almost certain that it is well suited to the district and character of the people. * * * These customs are the growth of the wants of the people, the slow and silent creation of experience, and they are not to be eradicated swiftly and without injury. And we shall generally find, on close examination of agricultural systems widely different from ours, that there is some good reason for the difference, and that a sweeping condemnation can come only from those who are ignorant of the circumstances. Take France, for example. An Englishman or Scotchman almost irresistibly infers, when he knows that there are twenty millions, out of a population of thirty-eight, engaged in agriculture, that the proportion is outrageously great, and that there is no reason in the world save stupidity and prejudice why the proportion of the agricultural population to the commercial and industrial should not instantly be altered to one-fourth or one-fifth, as in England. But examine the products of the country, and the hasty conclusion is recalled. As M. Léonce de Lavergne, an unimpeachable witness, points out, much of the land in France and the products are such as to require a far greater amount of manual labour than in England; pasture is not so good there as here; the products are more varied, and some of them—such as the vine and olive—require all the attention a gardener gives to a delicate exotic.

XIV.—PROFESSOR J. E. CAIRNES (*Political Essays*).

(a). It would seem that, in the progress of nations from barbarism to civilization, there is a point at which the bulk of the people pass naturally into the peasant-proprietor condition. In the work just referred to, this transition has been traced in the industrial history of the Jews, Romans, and Greeks amongst ancient nations, and amongst moderns in that of the leading nations of Western Europe; and it has been shown with abundant and interesting illustration that the *régime* of peasant properties has been constantly coincident with great physical comfort amongst the masses of the people. As Mr. Thornton observes, it was after peasant proprietorship had existed for five hundred years in Judea, that David declared he had “never seen the righteous forsaken, nor his seed begging bread”; while, on the other hand, it was not till, under the later kings—when men had begun “to lay field to field till there was no place, that they might be placed alone in the midst of the earth,”—that pauperism became a constant and increasing evil among the Jews. The notion of every man “dwelling under his own vine and fig tree” was the traditional Jewish ideal of national happiness. In Roman history, to borrow another example from

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Thornton, though debt and poverty were never rare amongst the plebeians, pauperism as a normal phenomenon, paupers as a distinct class, did not make their appearance till towards the seventh century of the city, when the small peasant estates of the Roman commons had been consolidated into the enormous grazing farms cultivated by slaves, which were the characteristic feature of the later Roman agriculture. From being the scene of a thriving rustic population, each man the owner of his farm of some ten or twelve acres, Italy became a country of immense estates of absentee proprietors worked by slave-gangs; while the population, which had in the early time sustained itself by industry, crowded into the cities, and chiefly to Rome, where they became the formidable rabble whom it was found necessary to support by regular largesses of corn. The connection between pauperism and consolidation did not escape the patriots of the time. It is a noteworthy fact that the practice of largesses was introduced by the same men who were also the agitators for the distribution of the public lands.

(b). To give one example more: English history illustrates the same tendency to peasant proprietorship at a certain stage of a nation's growth, and not less decisively the social value of that economy. The period when it had attained its greatest development in England seems to have been about the end of the fifteenth century, by which time the condition of villenage had very generally passed into that of copyhold tenure, while that tendency to a consolidation of estates and holdings which marked the epoch of Elizabeth had not yet commenced. To what extent the system then actually prevailed, there is not perhaps any distinct evidence to show; but two centuries later, when considerable progress had been made in the consolidation of farms, the authorities, on whom Lord Macaulay relies, speak of not less than 160,000 proprietors as existing in England, forming with their families not less than a seventh of the whole population, who derived their subsistence from little freehold estates. "These petty proprietors," says the historian, "an eminently manly and true-hearted race, cultivated their own fields with their own hands, and enjoyed a modest competence, without affecting to have scutcheons and crests, or aspiring to sit on the bench of justice."

Of the remarkable prosperity enjoyed by the rural population of England when peasant proprietorship formed the prevailing tenure—that is to say, in the latter half of the fifteenth century,—the evidence adduced by Mr. Thornton is copious and striking, and to my mind conclusive; nor is it the less instructive when contrasted with the fact that the movement towards consolidation, which followed the period in question, was attended with an extraordinary increase of pauperism, resulting, as is well known, in the passing of the first English Poor Law. These examples might easily be multiplied; but enough has probably been said to illustrate, if not to substantiate, our position that in the progress of nations from barbarism to civilization the condition of peasant proprietorship naturally arises, and that the period when it has prevailed has always been conspicuous for human well-being. Now, into this phase of industrial existence, the Irish people have never passed. The fact, as it seems to me, is one intimately connected with their present condition and character.

APPENDIX XXV.

INCIDENTS OF PEASANT PROPRIETORSHIP IN EUROPE.

The extracts in this Appendix are from the same sources APP. XXV. as those in the preceding Appendix. Among the incidents of peasant proprietorship, though not peculiar to them, may be classed the laws of inheritance.

LAW OF
INHERITANCE.

I.—HAMBURGH AND LUBECK.

Where neither father nor mother has bequeathed the property to any one son, the eldest son takes it at a prescribed valuation, and pays the value of their respective shares to his brothers and sisters.

II.—GREECE.

In case of intestacy, real property, on the death of the owner, is equally divided among the children, or nearest relatives. When there is a will, the testator can only reserve for his disposal a share of the estate equivalent to that which, after an equal division, descends by right to each of his direct heirs. No distinction is made between males and females; but, generally speaking, when feasible, a female is indemnified for her share of the land by being paid the money value of it, or by holding a mortgage of proportionate value on the whole of the estate.

III.—FRANCE.

Article 745 of the "Code Napoléon" provides for the equal distribution of the property of the deceased among his children, without distinction of age or sex. In default of children, the succession reverts to the brothers, sisters, and their children, in portions defined by the law; and in default of the collateral branches, to relations as far as the twelfth degree, where the law of succession stops. Article 756 provides for natural children, and Article 767 for the wife (in case of no succession) and for the rights of the State.

A testator, however, is not obliged to leave his successors the whole of his fortune. He can, if he so wishes, bequeath to whomsoever he may appoint one-fourth if he has three children, one-third if he has two children or their descendants, and one-half if he has only one child. If he has relations on both the father's and the mother's side, he cannot alienate more than one-third; if on one side only, he can dispose of three-fourths.

IV.—WURTEMBERG.

The land of the peasant cultivator is, after the death of the owner, if intestate, equally divided amongst his children, male and female, according to law. When, in accordance with the will of the father, one child becomes owner of all the paternal land, an estimate is made on a footing

- (3) brothers and sisters, and their issues; (4) surviving husband or wife; (5) collaterals not included in No. 3, to the tenth degree; (6) the State.

Relatives in the same degree take equal shares of the inheritance, without respect of sexes; and a relative in a nearer degree excludes a relative in a more remote degree.

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Where the owner dies having made a will, and having lineal descendants or lineal ancestors, two-thirds of the estate descend absolutely to his lawful heirs, as the whole would have done if he had died intestate, and in the same order; as does also such portion of the remaining third as may not have been disposed of by will by the owner, in accordance with his legal right so to dispose of this third.

VIII.—DENMARK.

(a). A testator may, in general, dispose of one-third of his entire property, real or personal, the remainder being of necessity distributed in equal portions to the heirs, male and female, of his body. This rule secures to each heir two-thirds, for certain, of the lot due to him as *ab intestato*, the division, where there is no will, being in equal shares. If the Danish law has done so much for the creation of peasant freeholds, it has also recognised as a desirable object that large estates be kept in single hands, and in the families of their original possessors. The owner of an unentailed "Sædegaard" may leave half his property to any one of his heirs, in which case he can freely dispose of one-fourth (instead of one-third) of the rest of his estate, the remaining three-fourths following the common rule of inheritance. But the favoured heir must, nevertheless, give the other claimants compensation for their shares reckoned on the usual foot. Again, if the proprietor of a "Sædegaard" die intestate, the sons may reserve his real estate on condition that they give their sisters, if any, full money compensation for the land of which the brothers have deprived them.

(b). The owner of a freehold "Boudergaard," be he of the peasant class or not, may leave his property according to a special set of rules, from which I extract the chief circumstances. These are—

(1). If a "Bonde" have no heirs of his body, he may leave his estate, (animals, tools, &c., inclusive) away as he pleases.

(2). He may leave all to any one of his heirs, without restriction as to sex.

(3). He may fix the compensation to be given by the favoured individual to the deprived heirs.

(4). A testator who favours a single heir (rule 2) can only bequeath *ad libitum* one-eighth of his entire property, real estate included.

(5). The owner of two or more farms may not make a cumulative bequest.

IX.—PRUSSIA.

The common law requires that parents should leave their children a fixed quota of their property, and that children who die without descendants should likewise leave their parents a fixed quota of their property. The mere fact of a will not recognising such natural heirs does not now invalidate it, neither does it matter, if the will recognise them, out of

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INHERITANCE.

Para. 1, contd.

what property or in what manner their shares are bequeathed. But if the will do not recognise them, then the testator's estate is considered to be intestate to the amount of the obligatory shares; or, in other words, the natural heirs are regarded as heirs *ab intestato* to that amount. Justinian introduced the principle of increasing the aggregate of obligatory heritages according to the number of children. He established two proportions of that aggregate, one-third and one-half. The Prussian law adopts the principle and increases the proportion to three. It fixes one-third for one or two children, one-half for three or four children, and two-thirds for more than four children. But these ratios are not calculated on the whole inheritance; they are calculated on the portions which each child would *ab intestato* have inherited. In each case the aggregate is equally divided. * * *

Every one can make a will and dispose as he likes of his property, except of the quantity required to satisfy the claims of the natural heirs ("Notherben"), and of the property entailed or settled, either in *fidei commissa*, or in accordance with the laws of feudal or similar descent.

In cases of intestacy, the law divides all property, including land, in certain proportions, amongst widow and children, or equally amongst the children, if there be no widow. But the laws of intestacy seem to have little application, for the custom of making a will is almost universal.

Sub-division of
peasant prop-
erties.

2. The effects of the laws of inheritance upon the sub-division of property are seen in the following extracts:—

I.—BELGIUM (*Mr. Wyndham*).

When real property of a deceased land-owner cannot conveniently be divided, it is sold, and the proceeds are divided amongst the heirs; but a sale must only be resorted to if division of a property is almost impossible. The object of this is to prevent the accumulation of landed property. This system was introduced into Belgium at the time of the French Revolution. Although the law tends to diminish the number of large farms; there are, nevertheless, still a certain number, owing either to some wealthy persons having succeeded in keeping their properties together, or by their buying many properties; or owing to farmers leasing lands from different owners, and uniting them into large farms. In some localities it is the interest of the owner to let his land to a farmer who already cultivates land belonging to other owners; while in other localities it is his interest to lease it to a small farmer. With regard to the division of landed property, it should be borne in mind that the partition of the land itself is not obligatory, provided those interested can come to an arrangement to make up the various equal shares from other property.

II.—BELGIUM (*Mr. Grattan*).

After remarking that the more land is sub-divided the more populous it becomes, Van Aelbroeck says: "If it is true that the land which is the most densely peopled is the most valuable to the State, it certainly

also follows that the small cultivators are the most profitable to both the State and the land." "So convinced are people in Flanders," he further says, "of the advantages of small holdings, that large farms are frequently divided and converted into small ones. A part, or all the buildings, are removed, and the lands are let to various small agricultural districts. The landlord incurs less outlay for the repair of buildings, and obtains a higher rent for his land." Another practical advantage of the system of small holdings, which results from the extreme sub-division of land in this country, is the facility it affords to a large number of persons, artisans, small traders, and others, to purchase or occupy land in the vicinity of towns or villages, by which means they are enabled to produce potatoes and other vegetables for domestic use, and to the great benefit of themselves and their families. The possession of a patch of land, however small, not only contributes to their comfort, but creates a feeling of pride and independence which re-acts favourably upon the character and conduct of the possessor.

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SUB-DIVISION
OF PEASANT
PROPERTIES.

Para. 2, contd.

III.—M. DE LAVELEYE.

Although the population of Flanders is twice as dense as that of Ireland, a Flemish peasant would never think of dividing the farm he cultivates among his children; and the idea of allowing a stranger to settle and build a house on it, would appear altogether monstrous to him. On the contrary, he will submit to extraordinary sacrifices to give his farm the size and typical shape it should have.

IV.—MR. S. LAING (*Observations in Europe, 1850*).

(1). Why is not the land here, in Flanders, or in Switzerland, or in Norway, frittered down, as in Ireland, into portions too small to afford a civilized subsistence to the cultivators? The land is occupied, as in Ireland, in small, not in large, farms. The natural affection for offspring and near relations is not less strong among the people of those countries, and the division of the land among the children of the proprietor is favoured by law, and compulsory, as a provision for them on the parent's death. Why, then, do we not find in those countries in which small farms are of old standing in very extensive districts, a division and sub-division of the land, or its products, as in Ireland, down to half a potatoe-bed, or a half diet of potatoes twice a day? The reason seems to be that the powerful influence on mind and conduct, which may be called the sense of property, is an effective check, in general, upon improvident marriages among the class of peasant proprietors, and upon wasteful habits and indolence in acquiring property to add to what they possess. The small tenant farmers or cottier population of Ireland have no such check, having no land of their own to raise and foster this sense of property in their social condition.

(2). There is also in those countries an element of aggregation, as well as one of division and sub-division at work in society and acting on property. In Ireland it is the divisive element only that is at work, the aggregative element is wanting. The occupants of the 562,000 small farms in Ireland, the two millions eight hundred thousand people living

APP. XXV. on them, are tenants, not proprietors. They cannot acquire by marriage, inheritance, or purchase from each other, any addition to the small lots of land they occupy at yearly rents as tenants, although they cannot be prevented from dividing and sub-dividing their small lots, or, what in social effect is the same, the subsistence produced from them, according to the dictates of natural affection. In the other countries occupied by small farmers holding lots of land of similar extent, the small farmers are the owners, and not merely the tenants, of the land they occupy. This class is numerous, and possesses a great proportion of all the land of those countries. The aggregation, consequently, of land into larger lots by marriages, inheritance from collateral relations, and by sale and purchase among themselves of lots of land too small to employ and subsist the heirs in the way they have been accustomed to live, is going on naturally every day as well as the division and sub-division among the children by the deaths of the parents. Over the whole of a country and population, this element of aggregation, which is totally wanting in the social condition and state of landed property in Ireland, must in the natural course of things equal the element of decrease, and counterbalance its tendency. In a former work on the social state of Norway, where the occupation of the land by peasant proprietors has been for many ages in the fullest development, I have endeavoured to explain, on this principle, the fact that, notwithstanding the equal inheritance of all the children of the parent proprietor, the land is not divided and sub-divided into portions too small to subsist the occupant; that society is not reduced to the state of the Irish peasantry; and that the equal division among the children is counteracted by the succession of heirs to collateral relations, by marriages and by purchase. There is practically no division of the land itself in those countries, like that which takes place in the tenant occupancies in Ireland. The actual division of the land itself into lots too small to afford employment and subsistence according to a certain conventional standard, rarely takes place in those countries in which the social arrangement of the small ownership of land has been long established. The price of the lot is of more value to the heir than the land itself, if it be too small to support him in the way customary in his class, and he sells it to some co-heir or neighbour, who has horses and stock to cultivate it and append it to his own land, and the heir with his little capital turns to some other means of subsistence.

(3). There is a strong conservative principle, also, in the social condition of a body of small land-owners of old standing, which cannot exist in a body of small tenants removable at each term, and with no right of property in their farms. The owner of six acres of land is under the same moral influence as the owner of six hundred. He has a social position to maintain; a feeling of being obliged to live as respectably as his equals; a customary standard in his house, furniture, clothing, food, to support; a repugnance to derogate from what ancient custom has established as suitable in his station, and an equal repugnance to be thought imprudent or extravagant by exceeding it. There are few positions in life in which men live under such powerful social restraints, as in the class of peasant proprietors. Their houses, furniture, clothing, diet, utensils, and even modes of working, are fixed and regulated by

ancient custom, from which no individual can deviate without in a manner APP. XXV.
losing caste.

V.—PROFESSOR CLIFFE LESLIE (1868).

The main object of the migration of the Creusois to Paris was more-over to accumulate enough to spend his last years in a cottage, and with a small farm of his own. "These village youths," says M. de Lavergne, "all sought to become proprietors like their fathers, and the money obtained by this migration went entirely in the purchase of the land. The last residue of the large domains was thus more and more cut into shreds." He adds, it is true, that the small estate of the peasant was itself frequently sub-divided by succession; legal expenses and mortgages too often swallowed up the best part of its scanty produce; and after all their efforts, not a few saw the land so dearly acquired escape at the last from their hands. But all these evils would have rapidly disappeared before an improvement in cultivation and a rise in the price of its produce; for it is observed throughout France that the sub-division of peasant properties among children, by succession, diminishes instead of increasing as the owners themselves increase in prosperity.

CONSERVATIVE
TENDENCY OF
PEASANT PRO-
PRIETORSHIP.

Para. 3.

3. The conservative tendency of peasant proprietorship is noticed in the following extracts:—

Conservative
tendency of
peasant proprie-
torship.

I.—HAMBURG.

The small proprietors are a slow-thinking race of people, troubling themselves little about politics, and disliking changes of any description. The neighbourhood of the city, however, and the new socialistic theories, with which the heads of all classes of workmen have of late years been filled, have not been without their influence upon the labouring men in the agricultural districts.

II.—SAXE COBURG GOTHA.—See GENERAL OBSERVATIONS in Appendix XXIV, para. 2, section VII.

III.—FRANCE.

There is another advantage attributed to the division of property, and to the existence in a country of a number of small proprietors. It is said that such a condition of property conduces to political as well as social order, because the greater the number of proprietors, the greater is the guarantee for the respect of property, and the less likely are the masses to nourish revolutionary and subversive designs.

IV.—M. DE LAVELEYE

Travelling in Andalusia this year (1869), I lighted upon peasants harvesting the crops on the lands of Spanish grandees, which they had shared among themselves. "Why," said they, "should these large estates remain almost uncultivated in the hands of people who have neither created nor improved them, but are ruining them by spending

APP. XXV.

CONSERVATIVE
TENDENCY OF
PEASANT PRO-
PRIETORSHIP.

Para. 3, contd.

elsewhere the net produce they yield?" I am convinced that were land more divided in those districts of Andalusia, where ideas of communism prevail at the present day, these would no longer find any adherents. In Belgium, socialism, though spreading among the working classes in manufacturing districts, does not penetrate into the country, where the small land-owners block up its way.

Therefore, I think the following propositions may be laid down as self-evident truths. There are no measures more conservative, or more conducive to the maintenance of order in society, than those which facilitate the acquirement of property in land by those who cultivate it; there are none fraught with more danger for the future than those which concentrate the ownership of the soil in the hands of a small number of families.

Checks upon
over-population.

4. The restraining influence of peasant proprietorship upon the growth of population is indicated in the following extracts:—

I.—SCHLESWIG HOLSTEIN.

Among the tenants who hold small farms in the villages, the population increases more rapidly than among the independent peasantry, which may be taken as a sign that the former class of persons is the richer of the two. * * The population of the agricultural districts is, as already mentioned, on the increase, especially in those villages where the land is farmed by good tenants. The increase is not so rapid as in the manufacturing towns; but the Duchies are essentially an agricultural country, and the inhabitants of the few towns which they comprise, such as Altona, Kiel, Flensburg, and Neumunster, bear but a small proportion to the mass of the population.

II.—FRANCE.

(a). The annual average rate of increase of the population in France has been less than in any other State of Europe. Official statistics show that during a period of twenty-four years, 1836—61, the rural population has undergone a diminution of 1·8 per cent., while that of the towns has constantly increased. In 1846 the proportion of the rural population was 75·78 per cent., and that of the urban 24·22 per cent., and this ratio has not greatly varied since. The decrease in the number of children in the families of the peasantry is a fact fully established by the "Enquête Agricole," and it is generally remarked, by those to whom questions on this subject were put, that there is a progressive tendency to diminution of fecundity in the families of the agricultural population. The labourer who has become a proprietor fears that his plot of land would be too much divided if he had a numerous family. He calculates, also, more than formerly, the expenses which he must incur in bringing up his children, and the uncertainty (should he have them) of their remaining with him, when grown up, to assist him. Where families of seven or eight children were commonly to be met with in France, they now consist of two or three, or, perhaps, only one child. As compared with other countries,

therefore, it may be said that the rural population of France is diminishing; for it is only when taken together with the urban population that even a general rate of increase can at all be established.

APP. XXV.

CENSUS
UPON OVER-
POPULATION.

Para. 3, contd.

(b).—PROFESSOR CLIFFE LESLIE (1868).

The rural population of France is now scarcely greater than it was at the beginning of the century, while the urban population has increased from six millions to sixteen; and of the numbers enumerated as belonging to the country, no small part now consists of an element infected with the vices of the camp and city

(through the conscription).

III.—WURTEMBERG (*Mr. Phipps, 26th November 1869*).

The communal regulations, which in a country of small proprietors cannot be considered otherwise than as excellent, are intended to prevent marriage, except under certain restrictions, to act as a bar to an excessive augmentation of the agricultural population, and prevent the land being crowded by more human beings than are necessary to cultivate it, or than it can fairly support. The laws imposing restrictions on marriage are, however, now carried out with great lenity, in consequence of the opposition they have met with in the country, and they are about to be entirely abolished. It is probable, though, that their very existence may have had some effect on the tide of yearly emigration, and may account for the fact of the majority of the emigrants being unmarried.

IV.—BELGIUM (*Mr. Wyndham, December 1869*).

The census of 1856 shows a diminution in the agricultural population of 21,846; this small decrease, hardly worth notice, is attributed to the increased use of machinery in agriculture, and to the attraction of superior profits which the labourer can obtain in mining and industrial occupation. In some of the late commercial reports which I have examined I have found, and in parts of the country which I have visited I have heard, complaints of the present and increasing difficulty of obtaining farm labourers.

V.—PRUSSIA.

As to relative increase of population, the small and middle proprietors very rarely marry early. On the whole, they seldom marry before 30 years of age, whereas the unlanded labourer marries on the average at 20 years. The family of a small or middle proprietor (under 100 acres) often consists of two children. In many (I believe in most, if not all) agricultural districts of small and middle proprietors the persons under 16 years and above 16 years are equal in number. The population is frequently stationary as soon as the land is owned by as many families as it will support. The fact of the facility for owning or leasing land, as the case may be, has usually a similar influence on the labourer. The proprietary labourer is usually as prudent as the small independent proprietor. The difference in these respects between the manufacturing labourers and the lower agricultural classes is everywhere most marked.

APP. XXV.

CHECKS
UPON OVER-
POPULATION.

Para. 4, contd.

* * Marriages among the peasant proprietors, who are not day-labourers, display generally the usual prudence and forecast, and take place, as an average, late. But the contrary is unhappily, for them, the case amongst the day labourers, who exist mainly by labour. They marry lightly, and consequently with their families become, not unfrequently, charges for the winter upon the poor funds. This cause, taken in connection with the estimate before given of their income and outgoings, will fully account for their neediness.

VI.—MR. S. LAING'S NOTES OF A TRAVELLER (1842).

(1). This parish of Montreux is one of the best cultivated and most productive vineyards in Europe, and is divided in very small portions among a great body of small proprietors. * * These small proprietors, with their sons and daughters, work on their own land, know exactly what it produces, what it costs them to live, and whether the land can support two families or not. Their standard of living is high, as they are proprietors. They are well lodged, their houses well furnished, and they live well, although they are working men. I lived with one of them two summers successively. This class of the inhabitants would no more think of marrying without means to live in a decent way, than any gentleman's sons or daughters in England; and indeed less, because there is no variety of means of living as in England. It must be altogether out of the land. The class below them, again, the mere labourers or village tradesmen, are under a similar economical restraint, which it is an abuse of words and principles to call moral restraint. The quantity of work which each of the small proprietors must hire is a known and filled up demand, not very variable. * * The number of labourers and tradesmen who can live by the work and custom of the other class, is as fixed and known as the means of living of the land-owners themselves. There is no chance living—no room for an additional house, even for this class, because the land is too valuable and too minutely divided to be planted with a labourer's house, if his labour be not necessary. All that is wanted is supplied; and until a vacancy naturally opens, in which a labourer and his wife could find work and house-room, he cannot marry. The economical restraint is thus quite as strong among the labourers as among the class of proprietors. Their standard of living, also, is necessarily raised by living and working all day along with a higher class. They are clad as well, females and males, as the peasant proprietors. The costume of the canton is used by all. This very parish might be cited as an instance of the restraining powers of property, and of the habits, tastes, and standard of living which attend a wide diffusion of property among a people, on their own over-multiplication. It is a proof that division of property by a law of succession different in principle from the feudal, is the true check upon over-population. * *

(2). Sir Francis d'Ivernois states that at Prælognan, in the States of Sardinia, in which a premium and even a pension is paid to fathers of families who have above 12 children, upon the exploded idea that the number of the population form the strength of the State, the young men had voluntarily entered into a secret association, binding themselves not to marry before 28 years of age, in consequence of the misery

they saw produced in their valley by over-population. They show intelligence in this resolution; but no such association would be necessary in any community in which property was attainable by industry; for in few situations can or does the labouring man, if he is in the way of earning anything by his labour, think of marrying at an earlier age than 28 or 30. It is only in Ireland, or in Sardinia, that the peasant sees no prospect of being better off at 28 or 30 years of age than at 18; and therefore, very naturally and very properly, marries at 18, or very early in life, so as to have a prospect of children grown up before he is past the age to work for them, and who will be able to work for themselves, and perhaps for him, when he is worn out.

APP. XXV.

CHECKS
UPON OVER-
POPULATION.

Para. 4, contd.

VII.—MR. J. S. MILL (*Principles of Political Economy, Book II, Chapter VII*).

Whether the labouring people live by land or by wages, they have always hitherto multiplied up to the limit set by their habitual standard of comfort. When that standard was low, not exceeding a scanty subsistence, the size of properties as well as the rate of wages has been kept down to what would barely support life. Extremely low ideas of what is necessary for subsistence, are perfectly compatible with peasant properties, and of a people who have always been used to poverty, and habit has reconciled them to it, there will be over-population, and excessive sub-division of land. But this is not to the purpose. The true question is, supposing a peasantry to possess land not insufficient, but sufficient, for their comfortable support, are they more or less likely to fall from this state of comfort, through improvident multiplication, than if they were living in an equally comfortable manner as hired labourers? All *a priori* considerations are in favour of their being less likely. The dependence of wages on population is a matter of speculation and discussion. That wages would fall if population were much increased, is often a matter of real doubt, and always a thing which requires some exercise of the thinking faculty for its intelligent recognition. But every peasant can satisfy himself from evidence which he can fully appreciate, whether his piece of land can be made to support several families in the same comfort in which it supports one. Few people like to leave their children a worse lot in life than their own. The parent who has land to leave is perfectly able to judge whether the children can live upon it or not; but people who are supported by wages, see no reason why their sons should be unable to support themselves in the same way, and trust accordingly to chance. "In husbandry," says Mr. Laing, "the labour to be done, the subsistence that labour will produce out of his portion of land, are seen and known elements in a man's calculation upon his means of subsistence. Can his square of land, or can it not, subsist a family; can he marry or not,—are questions which every man having land can answer without delay, doubt, or speculation. It is the depending on chance, where judgment has nothing clearly set before it, that causes reckless, improvident marriages in the lower as in the higher classes, and produces among us the effects of over-population, and chance necessarily enters into every man's calculations, when certainty is removed altogether, as it is where

App. XXV. subsistence is, by our distribution of property, the lot of but a small portion instead of about two-thirds of the people.

CHECKS
UPON OVER-
POPULATION.

Para. 1, contd.

There never has been a writer more keenly sensible of the evils brought upon the labouring classes by excess of population, than Sismondi, and this is one of the grounds of his earnest advocacy of peasant properties. He had ample opportunity, in more countries than one, for judging of their effect on population. Let us see his testimony: "In the countries in which cultivation by small proprietors still continues, population increases regularly and rapidly until it has attained its natural limits. * * A just family pride, common to the peasant and to the nobleman, makes him abstain from summoning into life children for whom he cannot properly provide.

Mr. Mill cites the similar testimony of Mr. Laing respecting Norway, Mr. Kay respecting Switzerland and Prussia, M. Fauche respecting Flanders, and adds that the experience which most decidedly contradicts the asserted tendency of peasant proprietorship to produce an excess of population is that of France.

Growth of towns.

5. The growth of towns is promoted by peasant proprietorship.

TOWNS AND MARKETS.

I.—PROFESSOR CLIFFE LESLIE (1867).

(a). It has been pointed out by Adam Smith that whatever progress was made by England in rural industry itself, originated in the trade and freer institutions of its towns. In common with other philosophers, he has also remarked that in every part of Europe wealth and civilisation began upon the border of the sea, where there was comparatively free and easy communication with the outer world, but in Ireland the English seized every important port. * *

(b). But England, at least, *had* towns to receive and employ its landless population, while Ireland was without them. And thus, while the chief movement of population in England has been a migration from the country to large towns, in Ireland the chief movement has been emigration to the towns of England and America. This emigration of the rural population of Ireland to America is no new phenomenon of this century; it was the subject of treatises more than a century ago. "What was it," says a writer of 1729, "induced so many of the commonality lately to go to America but high rents, bad seasons, and want of good tenures, or a permanent property in their lands? This kept them poor and low, that they scarce had sufficient credit to procure necessaries to subsist, or till their ground. They never had anything in store; all was from hand to mouth, so one or two bad crops broke them."

(c). It is not only to the maintenance of a rural population in Ireland, however, that just measures respecting the ownership and tenure of land would conduce; they would tend, likewise, to augment the home demand for labour in towns, to find new employments for capital, and to open a new sphere for manufactures and trade. For, in the natural progress of industry and opulence, as Adam Smith has clearly explained,

towns, manufactures, and a brisk and flourishing home trade are the natural consequences of rural prosperity, because agriculture, after providing for the first wants of existence, creates both a demand for higher things and the materials and subsistence of those who supply it. This is especially true of a country like Ireland, where the bulk of the population is dependent on agriculture, and must furnish the consumption upon which home trade depends. * *

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GROWTH OF
TOWNS.

Para. 5, contd.

(d). In the north-east of Ireland, the country towns are rapidly increasing in population and wealth, because country and town re-act on each other, and the rural wealth—created by town consumption of food and town markets for flax—finds its way back to the factory and shop. In the south and west, on the contrary, the country towns are, in general, decaying, because the rural population is poor and declining, and the peasant must be content with home-made flannel and friezes.

(e). Mr. Mill observed that a country will seldom have a productive agriculture “unless it has a large unagricultural population, which will generally be collected in towns and large villages, or unless it has the only available substitute, a large export trade in agricultural produce to supply a population elsewhere.” We do not dispute the justice of this remark, but add to it Adam Smith’s observation, that where cultivation is carried on with proper security to cultivators, it creates for itself a large non-agricultural population around it. This is most happily confirmed in the case of Flanders. Its “innumerable villages,” and the industry of the non-agricultural population they contain, are beyond question the direct offspring of agriculture, the ministers and creatures of the cultivators. * * If any one examines the tables of occupation in the census, he will see that the great majority of the non-agricultural population of Flanders is engaged in operations arising directly out of agriculture, *viz.*, either in furnishing it with what Dr. Chalmers calls its “secondaries,” that is to say, its implements, clothing, and other requirements, or in the preparation for use and the carriage and distribution of its principal produce, animals, milk, butter, flax, hemp, tobacco, hops, beet-root for sugar, oil plants, and grain. One little item of Flemish commerce is significant. The children of the peasantry feed rabbits in the manner M. de Laveye describes, and 1,250,000 skinned rabbits, valued at more than 1,500,000 francs, are annually exported to the London market from Ostend, while the skins are retained in the country for the manufacture of hats. Thus agriculture leads, after Adam Smith’s theory, both to foreign trade and manufactures at home.

(f). The author of the admirable treatise on the “Impediments to the prosperity of Ireland” has pointed out that the prosperity of its agricultural population is important, not only because they are the largest class, but because the prosperity of the largest class in any country is the best foundation for the prosperity of the remainder. “The condition of American tradesmen and servants, when compared with that of the same classes in England, shows how much more the value of this kind of labour depends on the general body of the population than on the expenditure, however lavish, of wealthy landlords, merchants, and manufacturers. This same fact is established by the prosperity of trades which supply common articles of necessary use, and the prece-

APP. XXV. unhealthy state of the trades confined to the production of articles of luxury.”

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GROWTH OF
TOWNS.

Para. 5, contd.

(g). Comparing the relative public burdens of the country and town, M. de Lavergne finds that in France the former bears three-fourths of the taxation, furnishes three-fourths of the troops, and gets one-third of the expenditure; and dividing, again, the country into regions, it is found that the half in which La Creuse is situated has only one-third of the railways and roads. Again, in one year, of which we have the official statistics,¹ the public expenditure in Paris is set down at upwards of £31,000,000; in La Creuse, at £150,000. Not a regiment is stationed at La Creuse, while its scanty resources and labour are heavily taxed to garrison Paris, as well as to build its new streets.

II.—M. DE LAVELEYE.

One most important fact in considering land systems is that the country itself, and not the town, is naturally the chief market for agricultural produce. It is a great error to suppose that agriculture, in order to thrive, must have a market in great cities for its productions. The cultivators, on the contrary, may constitute a market for themselves. Let them produce plenty of corn, animals of various kinds, milk, butter, cheese, and vegetables, and interchange their produce, and they will be well fed, to begin. But, furthermore, they will have the means of supporting a number of artificers; they may thus be well housed, furnished, and clothed, without any external market. For this, however, they must be proprietors of the soil they cultivate, and have all its fruits for themselves. If they are but tenants, who have a rent to pay and no permanent interest in the soil, they certainly require a market to make money. In a country whose cultivators are all tenants, an external market for their produce is indispensable; it is not so in a country of freeholders; all the latter requires is that agriculture should be carried on with the energy and intelligence which the diffusion of property is sure to arouse in a people.

6.—REGISTRY OF TITLES AND MORTGAGES.

I.—HAMBURGH.

Every landed estate within the Hamburgh territory must, according to law, have a page assigned to it in the State Register of mortgages (Hypothekenbuch), on which it stands inscribed in the name of the proprietor, and on which all mortgages are entered in their order, so that the older mortgage takes precedence over those made later. The Register (although entitled the “Hypothekenbuch”) is, in fact, one of both sales and mortgages; and only those persons whose names are entered in the register can have any legal rights to the property in question. Whether the sale of an estate is effected by private contract or by public auction, it is not valid until duly inscribed in the State Register.

The cost of registering the sale or mortgage of an estate in the State Register Book is 7 shillings sterling, and if merely a house or

¹ This was written in 1868.

building, 3s. 6d. There is a duty of 2 per cent. on the amount of the purchase-money to be paid to the State by the vendor and purchaser in equal moieties. As no documents are required beyond the registration of the sale or mortgage, no further expenses need be incurred by either party concerned.

APP. XXV.

REGISTRY OF
TITLES AND
MORTGAGES.

Para. 6, contd.

II.—LUBECK.

The rate of interest upon mortgages averages from 4 to 5 per cent. All mortgages are registered in a book kept for the purpose, for which a duty is payable of from one-quarter to one-half per cent. on the value of the property.

III.—SAXE COBURG GOTHA.

The properties of small owners are generally much burdened with mortgages, but there are many exceptions; the usual rate of interest was, until 1866, 4 per cent., but is now $4\frac{3}{4}$ per cent. These mortgages are all legally registered by a Magistrate, and the cost is 2 per cent. on small loans; on larger sums it amounts to $1\frac{1}{2}$, $1\frac{3}{4}$, down to $\frac{1}{3}$ per cent. on the amount of the capital.

The sale, transfer, exchange, or division of property must be transacted legally and entered on the public register. The usual relative cost is little above 1 per cent. of the value of the property.

IV.—FRANCE.

In cases of simple purchase, the Notary prepares the necessary deeds, which are duly signed and attested by the parties interested. The registration fees amount to 5 per cent., and the legal charges to 1 to 2 per cent., and they are paid by the purchaser, unless it is stated otherwise in the contract of sale. The process is simple and expeditious; but, as may be imagined, the expenses are considerable, and doubtless very much impede the sale and transfer of land.

The legal method of registering mortgages is very simple. In every arrondissement a register is kept, in which all mortgages must be entered with full particulars. A government functionary, called "Conservateur des Hypotheques," superintends all matters relating to the registry. The register is public, and the "Conservateur" is obliged to furnish extracts, when required, to any one. The cost of registration for a mortgage averages from 25s. to 35s., and a charge of 10d. a page is made for extracts. The "Conservateurs" are responsible for the correctness of extracts given.

V.—WURTEMBERG.

About forty years ago the whole country was surveyed, and the extent, estimated value, and ownership of every piece of land entered in registers kept at the office of the Mayor or principal official of each commune. Every change of proprietorship, whether caused by sale, exchange, inheritance, or marriage, is entered in the communal register, so that no possible dispute can arise as to title, &c. A duty of 1 per cent. on the value of the property is charged by the State on each occasion on which a fresh entry (owing to change of ownership, &c.) has

APP. XXV.

REGISTRY OF
TITLES AND
MORTGAGES.

Para. 6, contd.

to be made in the register, as well as a registry fee of $\frac{1}{2}$ per cent. charged by the commune. By applying for permission to inspect the communal register, an intending purchaser is enabled to ascertain at a glance the extent and ownership of any piece of land, however small, in the commune, as well as a list of any debts or charges on such property by mortgage, and the purchase or exchange would be completed by the parties appearing before the communal council, by whom the name of the new owner is registered. The validity of a sale of land does not depend on the registry, which is only a measure of administration.

VI.—ITALY.

The sale, transfer, exchange, or division of properties must be registered in the Office of Registry and Stamps; it must also be inscribed in the Register of Mortgages. Every chief town of a province has an office for the registry of mortgages.

VII.—PORTUGAL.

All transmissions of landed property must be registered to have any effect against third persons.

VIII.—NETHERLANDS.

Hence it appears that real property cannot, as by French law, be acquired by the mere process of sale, exchange, &c., but that besides, and in addition to such process, there is required a separate act, namely, an insertion of a copy of the deed of transfer in the public registers. These registers are kept by the custodians of mortgages, and contain all that concerns such matters within the jurisdiction of the district court in which they exercise their functions. Whenever the deed of transfer relates exclusively to the property transferred, it is copied at full length; but when it contains matters having no reference to the property transferred, it is sufficient that an authentic extract be made. A duty of 4 per cent., with an additional fee of 8*sch.*, is levied at the time of registration on all acts of award, sale, resale, transfer, retransfer, and all other civil and judicial acts affecting the transfer of landed property, except acts of exchange, which are liable to a tax of only half that amount, or 2 per cent.

IX.—PRUSSIA.

No mortgage is legally valid until it is entered in a register. The mortgage must be upon a specific estate. The mortgagee must elect, in cases of exchange of parcels of land, whether he will retain his right to the old parcels or pass it to the new parcels. The mortgages rank according to date of entry. The registers are kept by the departmental authorities for privileged estates, and by the lower authorities for other estates. * *

The following are the chief defects in the Prussian mortgage system, at any rate for the changed condition of landed property and of agriculture. It prescribed no sufficient details of the area and other important matters, but required merely the general indications which distinguish the mortgage property from others. This suited the old system, but is useless for small properties.

X.—AUSTRIA.

All immoveable properties in Austria, such as estates, houses, &c., are inscribed upon the books of the Public Registration Office; and the legal possession of all such properties, as also of the rights therein vested, can only be secured by the entry in the public register of the names, titles, claims, &c., of the proprietors, usufructuaries, mortgagees, &c. These entries are executed by the Office of the Registrar General, and are conditional upon a judicial decision in favour of the claims entered. This decision is only issued after the deed of sale, transfer, exchange, &c., has been proved, and found by the competent court sufficient to establish the legal claim or title in favour of which it is granted. Without such an appropriate deed or document, no entry can be effected in the public registers.

APP. XXV.

LOAN BANKS.

Para. 7

7. LOAN BANKS, &c.

I.—SAXE COBURG GOTHA.

Loans can be obtained from the Government Fund which furnishes money to an hypothecator. The conditions exact that the property be worth twice as much as the amount of loan, also that independently of the interest, a certain sum be paid towards the gradual diminution of the debts. These loans are generally necessary for the payment of purchase-money, or to satisfy the claims of heirs, or for the payment of debts incurred by former possessors.

II.—WURTEMBERG.

Government affords no special facilities for raising loans upon landed property. There exist, however, several private companies founded for the purpose of enabling proprietors to raise money upon their estates. These do the large business, while small proprietors obtain loans from the District Savings Banks (Oberamts Sparkassen), of which there are a considerable number in the respective districts. These establishments are not under Government control, but they are voluntarily placed under the supervision of the Government, which superintends their working.

Advances are generally made up to half of the value of the property, sometimes up to two-thirds of the value. The rate of interest varies from $4\frac{1}{2}$ to 6 per cent., and the repayment of the loan is very frequently stipulated in annuities extending over twenty to twenty-five years. These institutions do not, as a rule, enquire closely into the objects of the loan, but merely consider the question of the security offered. In general, loans on landed property are made, to a great extent, by private persons who prefer such investments to all others. * *

Upon the crisis in 1841, owing to the extensive executions levied, large sums were lost and capital turned to State securities and industrial undertakings, partly because confidence in the security of the state of agricultural affairs was shaken by the late events, and partly because agriculture, quickly recovering itself, was no longer in want of such loans; and, on the contrary, was under the more favourable circumstances resulting from the redemption of the feudal dues.

APP. XXV. large sums. It can be confidently asserted that now much the smallest portion of the capital of the country is lent on real security, and that a very great number of farmers are in possession of active capital.

LOAN BANKS.

Para. 7, contd.

In Upper Suabia especially, the number of farmers who hold State securities is very large, and there are even many who hold shares in industrial undertakings of every description. In fact, it is probable that, taking the farmers as a whole, the active capital in their possession almost equals the amount of the debts and mortgages on the landed property, taken collectively, and that it may, therefore, be said, as a whole, to be free from debt.

The small properties are, however, too generally heavily mortgaged. The sanction of the communal authorities must be obtained to every mortgage which must be entered in the public register, and they would, of course, give their consent to no new loan if the debts of the intending mortgagee amount to the estimated value of his estate. Great security is thus afforded. In the absence of any agreement to the contrary among the parties concerned, security offered must exceed by one-half the amount of the mortgage.

III.—HAMBURG.

There are no Government Banks or Public Companies which offer special facilities for raising loans upon landed property. There are, however, few estates within the Hamburg territory which are not encumbered with mortgage debts. The State Register of Mortgages affords a good security to lenders, and a great deal of landed and house property is mortgaged nearly up to its full value. When a son takes an estate as before mentioned, subject to payments to be made to his brothers and sisters, their shares usually remain as charges on the estate. So, also, in cases of sale, a portion of the purchase-money is almost always permitted to remain due upon mortgage security. The rate of interest is not fixed by law, and follows, in some measure, the rate of discount prevailing on the exchange. First mortgages at present pay 4 to 4½ per cent. interest; subsequent mortgages from 5 to 6 per cent.

IV.—FRANCE.

The facilities afforded for raising loans for purposes of agricultural improvements are not as great as are required. The "Crédit Agricole" is the only establishment which carries on operations of this kind to any extent. Since 1866 it has discounted to the amount of 40 millions sterling, and has advanced 2,480,000*l.* on agricultural produce and real property. Its commission varies from ½ to 1 per cent., but the rate of interest depends upon the risk and uncertainty of the guarantees. It averages, however, from 5 to 6 per cent. But, owing to the nature of these transactions, which are not as regular as commercial ones, the Bank of France, though not refusing, does not facilitate what is termed "papier agricole." There are Banks and Societies in some Departments, more or less in connection with the "Crédit Agricole," which carry on operations on a smaller scale, and from which the small proprietors derive great benefit. Loans are raised generally for the purchase of contiguous plots of land; in some cases, for the paying off in money the value of the portion of the land accruing to co-heirs, in order to avoid its division.

V.—BELGIUM.

APP. XXV.

 LOAN BANKS.

 Para. 7, contd.

No especial facilities are afforded in Belgium for borrowing money on lands, either from Government, special public Companies, or Banks. Land in Belgium is, as a rule, little burdened, but it is not uncommon for small cultivators to borrow money of local usurers or of notaries, their lands or stock forming the security. Many thus get into difficulties from which they are unable to extricate themselves.

Landed property in Belgium is very frequently mortgaged, and the rate of interest at which advances may be obtained upon mortgage depends very much upon the value of money at the time. During the war between Prussia and Austria in 1866, the rate of interest upon money advanced on mortgage reached 7 per cent. per annum; the present rate is about $4\frac{1}{2}$ per cent. Loans are sought more frequently for the purpose of facilitating the purchase of land, than with a view of making improvements upon properties. There are two public Companies, the "Caisse des Propriétaires" and the "Caisse Hypothécaire," established in Brussels, both of which lend money on mortgage. The conditions upon which these Companies make these advances is that of repayment by annual instalments, which embrace a portion of the capital, interest on the money advanced, and a commission; whereas loans obtained from private persons, through notaries, are usually contracted for a specific term of years, generally ten. The expenses attendant upon raising money by mortgage, including registration and notarial fees, amount to 3 per cent. paid by the borrowers.

VI.—PORTUGAL.

(a). Special facilities for raising loans upon all landed property, whether in large or small parcels, are afforded by a public Company sanctioned by, and enjoying special privileges from, Government, under the provisions of the law of 13th July 1869, which enacts that any Land Credit Company, or Land Mortgage Bank, to be thereafter constituted, shall, upon the fulfilment of certain preliminary conditions, enjoy, during twenty-four years from the date of its official constitution, the exclusive privilege of issuing mortgage bonds or debentures, which shall represent solely and exclusively the transactions of the Companies in loans upon mortgages of real property. A Company was accordingly constituted under the provisions of this law, *viz.*, the "Companhia Geral do Credito Predial Portuguez," the statutes of which were approved by the State on the 25th October 1864.

(b). Up to the end of 1868, loans on the security of real property had been made by the Company to the amount of £1,096,664; the saleable value of the properties mortgaged amounting to £2,514,340. By far the largest portion of these loans, whether as regards number or amount, were raised at 6 per cent. interest, and were repayable by annuities extending over 60 years; three-fourths of the number of the loans were contracted for sums under £450; and one-half of the total value was raised in sums ranging from £20 to £2,3000. It is reasonable, therefore, to suppose that a considerable proportion of the money lent by the Company has been taken up by the smaller proprietors; and it will be remembered that the system may be said to be still in its infancy.

APP. XXV.

LOAN BANKS.

Para. 7, contd.

(c). The terms and conditions upon which these loans are effected are—that the property mortgaged should be of twice the value of the amount advanced; that the sum borrowed shall be furnished to the borrower in mortgage bonds at par, bearing the same interest as the loan, the Company undertaking to negotiate the bonds and to make advances upon them; or, where the borrower prefers it, the loan may be made in money; that the long annuities by which the principal and interest are to be repaid shall never extend over a period of less than 10 or more than 60 years, and shall be payable in two equal half-yearly instalments; that such annuities shall comprise—

- (1). Interest, which shall never exceed 6 per cent. on the capital lent;
- (2). A sinking fund, to be determined by the rate of interest and the duration of the loan;
- (3). A commission for expenses of management, which shall never exceed 1 per cent. per annum;

that interest at the same rate as that on the loan shall accrue on the overdue half-yearly payments, and that default of payment of the annuities shall also entitle the Company to claim immediate payment in full of the debt, within 30 days from notice given, and, failing payment, to foreclose in due form of law. * *

(d). In practice, these loans scarcely ever bear less than 7 per cent. interest, independently of the sinking fund—a rate which will appear high in English eyes, but which is not excessive as compared with the ordinary interest of money and the average price of the Portuguese funds. There is, nevertheless, an opinion current in the country that the charge will be heavier than many of the impoverished estates will bear in the long run; that the Company will consequently be compelled in these cases to foreclose, and that considerable quantities of land will by this means be brought into the market—a result which, if it arises, will be analogous in many respects to the operation of the Encumbered Estates Act in Ireland. This result is rendered the less improbable by the fact that, while the ostensible object for which the loans are raised is the improvement of the property, they are frequently entered into to relieve the owner from pecuniary embarrassments arising from other causes.

VII.—DENMARK.

The freeholder often leases his land to his daughter—a practice fertile of matrimonial speculations, to which the peasantry are so prone. The heir would probably have to give a mortgage on the farm in order to raise the portions due to brothers and sisters. There are in Denmark four societies of the “Crédit Foncier” class, and the local savings banks also lend money on mortgage. The rule of the credit societies is to lend half the full value of the property at 4 per cent. interest, with 1s. 8d. per cent. for expenses, and 7s. 8d. for sinking fund. But the advance is in the societies’ paper, which at present stands at from 10 to 15 below par (100). The savings bank rate is about 4 per cent. on deposits, and 4 per cent. is charged on money lent on mortgage. Speaking generally, that part of the land of the kingdom which can be hypothecated is mortgaged up to 40 per cent. of the value. Many life-

tenants on becoming free-holders have paid down one-third of the price of the farm, giving the seller a mortgage on the land for the remainder, the rate being commonly 4 per cent. According to the usury law, which is generally evaded, 4 per cent. is the highest interest allowed on real property mortgages.

APP. XXV.

LOAN BANKS.

Para. 7, cont

VIII.—NETHERLANDS.

The Government affords no aid, either directly or indirectly, towards the raising of loans upon landed property. Four or five public Companies, whose special object it is to advance loans on mortgage of real property, exist in Holland, but they have no public character, and enjoy no privileges or special protection from the Government. These *Crédit Foncier* Companies, acting as intermediaries between the proprietors and the capitalists, accept all the responsibility attaching to each particular mortgage, and issue their obligations payable to bearer, guaranteed by the whole of the mortgages of the Company and their sinking fund. Notwithstanding these advantages, many capitalists prefer themselves to make advances directly on mortgage, either from force of previous habit, or from ignorance, or from a hope of obtaining a higher interest by making their own bare gains. It is easy to imagine that in remote districts, where access to an office of a Land Mortgage Company is difficult, and where one or another private capitalist happens to have peculiar facilities for putting himself in communication with the farmer, studying his wants, and ascertaining his means, the latter may prefer what seems to him the most natural mode of obtaining a loan.

The objects for which a proprietor farmer is tempted to effect a mortgage on his paternal estate are numerous. * * * But I believe that one of the most frequent objects of mortgaging estates is that of preventing a too great sub-division of property, on the death of its owner, amongst his heirs, by assigning to one or another of them his portion in other securities; this would be especially the case with regard to the portions of daughters.

Properties are very commonly mortgaged to the extent of half their value, and often above it. The total value of mortgages on real property in the Netherlands is about 40,000,000 £. sterling; but more than a half has been effected on terms varying from 5 to 5½ per cent., which point rather to house property, including, doubtless, farm buildings, than to the land itself. The rate of interest paid by farm property is from 4 to 5 per cent.

IX.—PRUSSIA.

(a). No special facilities for raising loans are afforded to peasant proprietors, either by Government or the Provincial Governments, and it cannot be said that special facilities are afforded by special public Companies or Banks (of which there are none aided by Government), except so far as the Mortgage Debenture Associations and the Mortgage Banks are especially established for the purpose of granting loans on properties of whatever size. The raising of such loans is subject to all the usual commercial incidents. The Rent-charge Banks, instituted for facilitat-

APP. XXV. ing the carrying out of the Stein-Hardenberg Legislation, are, of course, an exception. Loans are raised seldom for circulating capital, and amongst middle and small proprietors, mostly for paying portions to the children without dividing the land. The quite small proprietor cannot thus raise money, and is compelled to divide the land itself for the inheritance of his children. * * So far as partial statistics go, the peasant properties do not seem to be as heavily mortgaged as the privileged properties. By other accounts there is no difference in this respect between the two classes of property, and the land debt is two-thirds of the land value. The rate of interest varies from 4 to 6½ per cent. on small and less favourably situated properties. The quite small proprietors cannot dispose of mortgages.

LOAN BANKS.

Para. 7, contd.

(b).—THE MORTGAGE DEBENTURE ASSOCIATIONS.

(1). The real credit institutions are of many kinds, but in the first rank are the Mortgage Debenture Associations. The real credit institutions comprise also the provincial loan funds, "Hülfskassen," the savings banks, and many other banks and institutions which promote, more or less directly, the activity of the land-owner and agriculturist by offering facilities of money capital.

(2). The system of mortgage debentures is peculiarly a Prussian system, and these associations for their issue have many of them existed for nearly a century. That system arose in the reign of Frederic the Great. In 1769 the Silesian Association was founded; its leading idea was "that the land-owners belonging to the associated districts should form an association by which they made themselves mutually responsible to provide for every land-owner money to half the taxed value of his property, and to pay every creditor who had a mortgage debenture not only the half-yearly interest, but also the capital upon six months' notice." The favourable results of this institution soon became known, and the Associations of Pomerania, of Kurmark and Neumark, of West Prussia and of East Prussia, were founded in 1781, 1782, 1787, and 1808, respectively. All these institutions had for their object to make advances to the nobles and large land-owners for the promotion of agriculture. The first exception in favour of other properties was in the East Prussian Association. The principles common to all were that every owner of a privileged estate could claim a loan, and that such a loan should be granted in debentures to bearer to half (in East Prussia to two-thirds) of the taxed value of the property. The debentures were usually in two categories, at 4 per cent. and 3½ per cent. The mortgagor had to sell them in order to get his loan in cash. The debentures contained a description of the estate upon them, and they were guaranteed by the whole association. The mortgagor paid the interest to the Association, who paid it to the creditor. The Association could not give notice either to the creditor or to the debtor; but the former could give notice to call in the money. The compulsory Sinking Fund did not at first exist in all, but is a most advantageous principle of most of these associations. It has doubtless been productive of immense benefit. In the Posen Association it took the form of 5 per cent. charged to the debtor, and 4 per cent. paid to the creditor, the 1 per cent. being devoted to a sinking fund with a period of 41 years. The

plan was similar in the other institutions, but the sinking fund varied in form. The method of valuation varied much also. In later times peasant-proprietors have either been admitted to the associations, or special associations have been formed for them. * * Some of the modern associations accept properties of a very low value, such as those bringing in a net income of £7-10 a year. In the modern ones there has also been a different apportionment of the interest paid by the creditor, for a fixed percentage (usually $\frac{1}{2}$ per cent.) has been retained for expenses of management.

APP. XXV.

LOAN BANKS.

Para. 7, contd.

(c).—THE RENT-CHARGE BANKS.

(1). The faculty of commuting rent-charges and services by money instead of land payment, which was offered by the first National Agricultural Laws, was of comparatively little use. It became obvious that the object of the commutation could not be attained unless the legislation provided means for furnishing with the necessary sums of money those of the peasants who had no capital with which to obtain the commutation. Hence the rent-charge banks were established in 1850, Saxony having led the way in 1832. The object of these banks is to pay for the peasant the commutation capital, receiving from him in return an annual sum which shall pay interest and shall gradually pay off the capital advanced. The peasant debtor is allowed to pay on during the sinking fund period any sums, however small, to accelerate the extinction of his rent-charge.

(2). The basis of this legislation is the law of 2nd March 1850, for the establishment of rent-charge banks. It commences by directing the establishment of a rent-charge bank for each province, and by stating the mode of attaining the object in view. It was decided, after deliberation, that provincial banks were preferable to a central bank. The law grants the State guarantee to the fulfilment of all the obligations undertaken by the bank. This guarantee involves no pecuniary sacrifice, but strengthens the credit of the banks. The banks are under the supervision of the Member of Finance and the Member of Agriculture, and are co-ordinate with the Special Procedure Authorities, and are carried on by a director and the necessary staff under the control of the provincial authorities. In all cases of commutation by means of the bank, the commutation debtor needs only to pay nine-tenths of it to the bank, for one-tenth can from the first day be written off. But he can elect to pay the full amount, and thus shorten the period of repayment. In cases of arrears, he has to pay a special yearly sum equal to one-twentieth of these arrears to liquidate them.

(3). The rent-charges are preference claims upon the land. This claim is not, however, to interfere with sub-division of the land, as it is to be distributed according to the rule for taxes. The rent-charges can be paid in monthly instalments with the taxes. It is the custom in Prussia to collect taxes in monthly instalments. The periods of repayment are 673 months when the tenth of the commutation capital is written off, and 493 months when the total commutation capital is to be repaid. Payments of capital may be made at any time in acceleration of the extinction of the charge, and for this purpose tables are annexed to the law. It was not deemed necessary to fix a minimum sum below which

APP. XXV. no such payments would be received, as no use had been made of the faculty to pay in such low minimum sums as 6*l.* in the Eichsfeld Sinking Fund Association, and as 1*l.* in the Land-rent Charge Bank of Saxony.

LOAN BANKS.

Para. 7, contd.

(4). The receiver of the commutation obtains from the bank a capital sum of 20 years' purchase of the rent-charge. This is paid in rent-charge debentures of a fixed amount, and the fractions beyond such an amount are paid in cash. There are debentures of 1,000, 500, 100, 25, and 10 dollars, bearing interest at 4 per cent. in half-yearly payments. Coupons for eight years are attached, and these are renewed as may be necessary. These coupons are payable in cash, and are legal tender in all Government offices. The payment of the coupons is barred, in favour of the bank, by the lapse of four years. The difference between the 4 per cent. interest on the debenture and the $4\frac{1}{2}$ or 5 per cent. reserved as rent charge, is to be applied to the extinction of the debentures. Every half-year, after the first year, so many debentures must be paid off in full, by drawings, as shall amount to the sum of the cash receipts from the above difference, and the commutation capital paid in during the half-year. After ten years the payment of drawn debentures is barred in favour of the bank.

(5). The law contains some special directions respecting the rights of third persons. A reserve fund is formed by interest on cash balances and by the barring of coupons or debentures. This reserve fund is to be applied to replacing loans of the general fund, and whenever it does not suffice, the State pays the difference. The State undertakes the cost of management.

(d).—AGRICULTURAL LOAN UNIONS.

The Raiffeisen, or agricultural loan unions, are associated banks; but they do not bank for the profit of this or that person. No banking profit is levied, only so much interest being charged as will repay the interest of the borrowed capital, and repay the actual costs of management. The guarantee of such unions is by the joint liability of members to the amount of all their property.

(e).—THE SAVINGS BANKS.

Of Prussia are guaranteed by the department or the town for the benefit of which they are founded. Their profits are consequently devoted to general objects connected with the department or town. In this way many buildings for the benefit of the community have been erected.

(f).—EAST PRUSSIA.

Instead of leasing a farm, as in England, a man here buys a freehold estate. It seldom happens that a man has the whole of the purchase money to pay down,—one-half, a third, a quarter, or less, of the sum total is only usually paid. The Royal Landschafts Bank, a Government institution, grants loans up to one-third or one-half of the appraised (low estimate) value of the estates. These loans are granted in the shape of loan letters ("Pfand-Briefe") with coupons attached bearing $3\frac{1}{2}$ and $4\frac{1}{2}$ per cent., which are paid by the Landshafts Bank. These loan letters,

or Pfand-Briefe, are subject to heavy discount in the money market, and the loan taker has virtually to pay 6 to 7 per cent. for the advance per annum. APP. XXV.

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LOAN BANKS.

Para 7, contd.

X.—AUSTRIA.

(a). Special facilities for raising loans upon immoveable property are afforded by special public companies, banks, savings banks, &c. All these establishments are independent of the State; although, in point of fact, some of them have been constituted under Government protection, and endowed by Government with special privileges. The terms of these establishments for loans upon landed securities are generally either repayment at a fixed date, or six months or a year after notice; or else by instalments, within 15 to 32 years. The usual rate of interest was, till quite recently, 5 per cent. But two years ago the laws against usury were abolished, and since then the rate of interest has risen to 6 per cent.

(b). An immense impetus was given to the establishment of credit banks and companies, &c., by the change effected in the position of the agricultural classes under the operation of the Austrian Land Laws of 1848. Indeed, so far as I (Lord Lytton) can ascertain, no institutions of this kind existed previous to that period. The most important of those now existing are the Austrian "Credit Institute," with a special capital of 40,000,000 for loans on mortgage, the "Mortgage Bank of Bohemia," the Austrian "Boden Credit Anstalt," the "Agrar Bank," and the Galician "Provincial Credit Institute," which is an establishment of older standing. The total number of these establishments is, however, insufficient to meet the demand of the owners of land. The highest interest at which these banks advance money on landed security is 7 per cent., their usual rate of interest being, as before stated, 6 per cent. It is the opinion of the Government that this rate of interest is too high to afford effectual relief to the wants of the landed proprietors, especially the small proprietors; and that it is out of all proportion to the produce of the land. Landed proprietors can only afford it by combining agricultural with commercial or manufacturing industry. The loans on mortgages made by these banks and companies amount to only 6 per cent. of the total loans on mortgage. The remaining 94 per cent. are invested by private capitalists and savings banks.

XI.—RUSSIA.

(a). Being either mortgaged to the State, or held at a rental, the lands of the peasantry cannot be sold, transferred, or divided, except under the provisions of the Emancipation Act, the due execution of which is committed to "Provincial Courts for regulating the affairs of the peasantry." All transactions between peasants in respect of lands must be legalised by their Cantonal Administration, and confirmed by the Provincial Courts above named.

(b). The peasant allotments are in process of being purchased, with the aid of Government, to the extent of four-fifths of the value placed upon them by the Emancipation Act. Until the general mortgage

APP. XXV. (now¹ amounting to 487,174,231 roubles, or £61,956,570) is paid off, the peasantry will be unable to raise any further loans on the legal security of immoveable property.

LOAN BANKS.

Para. 7, contd.

(c). While assisting the peasantry, the Imperial Government has, at the same time, foreclosed the mortgages which it held on the lands of the nobility or gentry to the extent of £53,000,000. The Act of Emancipation included a kind of Encumbered Estates Act, inasmuch as all debts due to Government loan banks are deducted from the gross amount of compensation given to landed proprietors for the alienation of portions of their lands to the peasantry.

(d.) There are now two land banks in Russia, one at Kherson the other at St. Petersburg; but their advances are made principally to large landed proprietors, who, since the emancipation of their serfs, have endeavoured to work their estates with the aid of capital.

8. It appears from this appendix that the legislation respecting land in most of the countries in continental Europe has been marked by a care, forethought, and intelligent concern for the well-being of the class of cultivators which we miss in the similar legislation in England.

¹ January 1870.

APPENDIX XXVI.

LIBERATION OF CULTIVATORS.

1.—DENMARK.

REPORT BY MR. G. STRACHEY (*18th December 1869*).

I. The account given by native historians of the agricultural state of Denmark in the middle of the last century almost passes belief. Potatoes, clover, and several other important plants were unknown. Wheat was only cultivated in Laaland and Falster; hemp, flax, rape, and mustard, scarcely anywhere. The population was at a stand-still, or on the decline. The peasant's farm had been taken wholesale into the manors for want of tenants to occupy them. The nobles were abusing their power to the utmost, especially their territorial jurisdiction, which they exercised with atrocious rigour in a kind of Court Baron where the judges were often the lords' own footmen and coachmen. But about a hundred years ago a better state of things began. Parallel with the rise of the French Physiocrats there appeared in Denmark a school of Economists, headed by Pontoppidan, whose writings opened a way for the land reforms instituted and suggested by foreigners like Reverdil, the Bernstorfs, Stolberg, and last, though by no means least, the enlightened and unfortunate Struensee.

II. In 1761 Count Stolberg counselled the emancipation of the peasant farms of one of the royal properties. The peasants were granted hereditary tenure on a quit-rent "Arvefoeste"; their "corvée" being commuted to a cash payment, an example followed on the estates of the city of Copenhagen. Soon the crown domains were sold wholesale, partly in order to raise money for an expected war with Peter III of Russia, the farms being in some instances bought by the tenants. A law of 1769, in which I conjecturally trace the hand of Reverdil, encourages the great proprietors of the soil to sell the farms of the "Böndergods" to their occupiers. In a preamble which reads like a chapter from a political treatise by some advanced thinker of the 19th century, the legislator declares that the feeling that a man is bestowing his labour on his own land is the best spur to agricultural industry and progress. Wherefore the law grants that the enjoyment of the privileges attached to a "Sædegaard" shall henceforth be independent of the quantity of peasant earth attached thereto, thus removing a main stumbling block from the way of proprietors who might be disposed to sell their tenemental farms.

III. After the fall of Struensee there occurred a short period of legislative re-action, but to the influence of Guldberg soon succeeded the enlightened endeavours of Count Reventlow and the younger Bernstorff. Under the regency of the Crown Prince Frederic a complete series of land reforms was carried out. Measures were taken to do away with the intersection of properties. More Crown lands were resigned to the

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tenants for a quit-rent. The tie which under the name of "Stavnsbaand" bound the peasantry to the soil was abolished.¹ The "corvée" was defined; the tithe was lightened and adjusted; corn payments were allowed to be commuted; the housemen were furnished with small allotments. The permission of 1769, which had been withdrawn after the fall of Struensee, was renewed, and the relations of landlords and tenants were regulated afresh in the interest of the latter.

IV. These reforms were followed by a rapid change for the better in the agrarian condition of Denmark. But relapses occurred, one between 1818 and 1826, so desperate that landed property lost more than half its value. At the same time illiberal regulations were passed. The lease to the landlords to sell farms without loss of fiscal privileges was cancelled. Large numbers of the newly-created freeholders disappeared. In 1835 was inaugurated the "Slanderforfatig," or Representative Constitution, according to which two Consultative Assemblies, one in Jutland, the other in Zealand, were to be regularly convoked. Farmers, both freeholders and leaseholders, got elected to the Assemblies, and the political agitation which followed penetrated downwards. Soon a certain social ferment was remarked amongst the peasants. The "Bonde's" horizon was no longer bounded by corn, cows, and horses. He was heard to talk of equal taxation, services, freeholds, and quit-rents. A newspaper edited by J. A. Hansen began to discuss all manner of agrarian questions. The feudal pretensions and extortions of the landlords were challenged at country meetings, and there were angry debates in the Assemblies. Far from declining the contest, the landlords came courageously to the front. * * *

V. What the peasants wanted was to be treated like human beings, to have the land tax imposed on the manors, and, above all, that the 30,000 leaseholders might become leaseholders of the farms which they occupied by the "Fæste" tenure. But this, it was now evident, the "Bonde" would never obtain by a mere social movement. Such reforms could only be carried by a strong political party, and accordingly to acquire political influence became the instinctive if not reasoned object of the "peasants' friends." * *

VI. In the Constitutional Assembly of 1848 the necessity of making the life-tenants into free-holders was recognised by the cabinet of the day. In 1849 a Land Commission, named for this and general purposes, unanimously asserted the State's right to impose such a sacrifice on the landholders, but came to no distinct conclusion as to the expediency or manner of a forcible solution. In 1850, the "corvée" and the fiscal privileges of "free earth" were abolished; but the question of tenures

¹ Confining to the comparative obscurity of a note an essential historical explanation, I would remark that the Danish peasants, originally freemen, and to a great extent freeholders, gradually fell into the practice of feudal "Commendation." The Danish form of this mediæval institution was called "Vornedskab," a relationship under which, by the middle of the fourteenth century, the "Bonde" had been transformed into a kind of "villein regardant." In later times it happened that owing to the oppression of the lords, and other causes, "there was not a man to till the ground," so that Denmark was covered with "latifundia." To remedy this, King Frederick IV instituted a militia (1701 and 1721), on whose rolls all peasants were inscribed, from the age of 14 to 35. By threatening the peasants with the army, the lord could drive them to take his farms; this was the so-called "Stavnsbaand."

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legal shackles which now obstruct their full enjoyment of proprietary rights. Exceptional cases apart, a landlord selling by the proposed auction would, in spite of the deduction of the one-third fine, realise at least as much money as he could by a sale to-day, under the conditions imposed on him by existing law and custom. * * *

IX. This measure has been crossed by a ministerial programme, which I may briefly describe as the proposed destruction of the elaborate legal system described in the first chapter of this report. Details apart, it corresponds in principle with Mr. Hansen's scheme, but gives the landlord larger facilities for acquiring the tenemental lands, and grants general free trade in land, in opposition to the Protectionist policy of the "Peasants' Friends." This programme cuts both ways; but it is not at present introduced as a positive measure. * * *

X. The Cabinet of Count Frijs includes several country gentlemen. He himself is, or was, the greatest landholder in the north of Europe (Russian estates excepted), and he is officially pledged to the principle of conversion. Mr. Hall, and the remains of the National Liberal party, follow in the same line, and they will adhere to Mr. Hansen's proposals. Under these circumstances, it were rash for a foreigner to assert that the projected conversion is inexpedient, or that it is undesirable to accelerate its progress by a little legislative pressure. The English ear may at first seem to catch an echo of social revolution from the whole business; but such a prejudice should, I conceive, be cured by an impartial study of the Danish Statute Book. The tenures of Denmark are not the tenures of England. The Danish landlord is not, except as regards his demesne, the complete legal or customary master of his own. To the tenemental lands he stands, very roughly speaking, as did the zemindar to the ryot before the permanent settlement. From another point of view the analogy between the Bengalee and the Scandinavian would be close enough. If the zemindar-proprietor, or tax-gatherer, was not the mildest of masters, the Danish Jorddrot was, till recent times, the scourge of the peasantry. Under his parental love the Danish "bønde," now the freest, the most politically wise, the best educated of continental yeomen, was a mere hewer of wood and drawer of water. His lot was no better than that of the most miserable ryot of Bengal.

2. It appears that in Denmark the class of peasant-proprietors was destroyed by the usurpations of the nobles, until the decline of agriculture forced upon the government measures of reform. These were directed to promoting the purchase of their farms in fee-simple by the peasant-cultivators, or to fixing permanently the demand on them. Later, there was some re-actionary legislation; but agricultural reform is still tending in this direction.

3.—BADEN, GRAND DUCHY OF (*Report by Mr. E. P. M. Baillie, 9th December 1869*).

The tithes, dues, and various charges with which the land was at one time burdened, were all abolished by law during the period from 1833

to 1848, and compensation accorded to the land-owners for the losses thereby sustained. The burdens were commuted for a capital sum, generally 16 to 18 times the amount of their annual value. The law further provided that this capital, of which the State undertook to discharge one-fifth, should be paid off in equal portions annually (shorter periods not being excluded), together with 4 per cent. interest, during 25 years. Much of this capital was paid up very rapidly, and the various land-owners (mediatised Princes, private individuals, corporations, foundations, schools, &c.) soon found themselves in possession of considerable sums of ready money, which they again invested in land, at a time when the price of land was low, and let it out to tenant-farmers on terminable leases. This is the origin of tenant-farmers in Baden. The system, at any rate, works very well. I have been informed by several persons that these tenants are, as a body, the best farmers in the country, both as to intelligence and character. A statement of this kind will, however, always be disputed, and I cannot vouch for its truth.

We note that the State bore one-fifth of the payments to landlords for liberating the cultivators.

4.—AUSTRIA.

I.—REPORT BY MR. R. T. LYTTON (*31st December 1869*).

I. The application of the fental system to land and labour lasted in Austria till the year 1848, when it was abolished by revolutionary legislation. Previous to the abolition of it industry was dependent on imperial concessions; capital was locked up by the usury laws and the want of banks; production was protected against competition, both at home and abroad, by a high import tariff and inland taxes. The home markets were isolated from each other by the deficiency of all means of transport. The agricultural class was exclusively composed of those who owned and those who cultivated the soil. The relations of the latter to the former were those of subjects to sovereigns. Agricultural labour was compulsory. The landlords held Baronial Courts, and exercised civil as well as criminal jurisdiction. These privileges, however, were accompanied by peculiar obligations; for it was incumbent on the proprietors to provide not only for the secular and religious education, but also for the general health and comfort of the labouring population. * * * Here it may be mentioned that the great landed proprietors were, in many provinces, the only manufacturers on a large scale.

Parl. Paper,
Sess. 1870,
Vol. 66.

II.—REPORT BY MR. R. T. LYTTON (*15th January 1870*).

After describing the change in land tenures effected by the land laws of 1848-49 (see Appendix XXIII, para. 12), Mr. (now Lord) Lytton continued—

(a). The manner in which this change was effected was by compensation from the State to the great proprietors for the pecuniary value of the

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feudal rights of which the State then deprived them. The compensation was fixed and provided for in the following way :—

(b). A commission was appointed by the State for the re-valuation of all the properties on which the above-mentioned change of tenure was to be carried out. In the composition of this commission all the great proprietors were fully represented.

(c). The commission having calculated the pecuniary value of the feudal rights enjoyed by each proprietor, and the consequent compensation due to each proprietor for the abolition of those rights, presented to the Government its estimate of the total amount.

(d). From this estimated total, the Government cancelled one-third; two-thirds remained to be provided for. The amount represented by these two-thirds the State undertook to pay in 5 per cent. bonds, the whole debt being redeemable in forty years by annual drawings at par. To carry out this engagement, therefore, it was necessary to provide not only for the annual interest on the debt, but also for its redemption by means of a sinking fund within forty years.

(e). One-third of the amount necessary for this purpose is provided for by a tax levied exclusively on the new peasant-proprietors, and regarded as the price payable by them to the State for the immense advantage which they have derived from the legislation of 1848. The remaining one-third is assessed as a sur-tax on the local taxation of each province, and annually voted as part of the local budget by each of the Provincial Diets.¹

(f). The result of this arrangement is, that of the total amount of compensation assigned by the Land Commission to the great proprietors, one-third has been altogether disallowed by the State, and one of the remaining two-thirds is raised by a tax levied upon the great proprietors themselves. Virtually, therefore, the compensation they receive for the abolition of their feudal rights is only one-third of their estimated pecuniary value.

(g). The great proprietors generally (and so far as I am competent to judge justly) complain of this. But there are, at the present moment, very few of them who are not ready to admit that, despite also of the great inconvenience and heavy pecuniary loss to which they were subjected by the suddenness of the change through which they have passed, that change has been on the whole decidedly beneficial to themselves as well as to all other classes of the population, from an agricultural no less than from a social point of view.

(h). The improved condition of the peasant is, in most provinces of the empire, conspicuous. The great proprietors, constrained in order to escape ruin to cultivate their estates more carefully, have supplied the place of forced labour by greater scientific knowledge and more efficient machinery. The result is that many of them have doubled and some have trebled the income of their properties since 1848; whilst the average

¹ These bonds are called "Grund Entlastung," or Land Disencumbrance Bonds. They are issued for every province separately; the amount in each province limited to the sum fixed by the Commissioners for indemnities to the land-owners of the province. The bonds are given to each landlord in proportion to the amount of his claim for indemnity as established by the Commission.

market price of land has risen at least one hundred per cent., and in some provinces still higher, in that period. * *

(2). The laws of 1848-49 created an entirely new class of peasant-proprietors, and that class is now, on the whole, a thriving one. But those laws left intact the old class of great proprietors, whose properties are at this day as large as (and much better cultivated and more remunerative than) they were previous to 1848. The legislation of 1848 in Austria did not turn tenant-farmers into proprietors, for the bondsmen whom it emancipated already were proprietors. It simply converted feudal proprietorship into free proprietorship. It did not deprive the great proprietors of their properties; it only deprived them of certain feudal rights over the property of others.

We note that, in the measures for liberating the cultivators, the State, so far from recognizing any title in the great proprietors to be compensated for loss of "the unearned increment," struck off one-third from the estimated value of the rights which were to be purchased from the feudal proprietors.

5.—FRANCE.

M. DE TOCQUEVILLE (*France before the Revolution of 1789*).

I. I find many indications of the fact that in the middle ages the inhabitants of every village formed a community distinct from the lord of the soil. He no doubt employed the community, superintended it, governed it, but the village held in common certain property which was absolutely its own; it elected its own chiefs, and administered its affairs democratically. This ancient constitution of the parish may be traced in all the nations in which the feudal system prevailed, and in all the countries to which these nations have carried the remnants of their laws. These vestiges occur at every turn in England, and the system was in full vigour in Germany sixty years ago, as may be demonstrated by reading the Code of Frederic the Great. Even in France in the eighteenth century some traces of it were still in existence. * *

II. For several centuries the French nobility had grown gradually poorer and poorer. "Spite of its privileges, the nobility is ruined and wasted day by day, and the middle classes get possession of the large fortunes," wrote a nobleman in a melancholy strain in 1755; yet the laws by which the estates of the nobility were protected still remained the same, nothing appeared to be changed in their economical condition. Nevertheless, the more they lost their power the poorer they everywhere became in exactly the same proportion.

III. The French nobility still had entails, the right of primogeniture, territorial and perpetual dues, and whatever was called a beneficial interest in land. They had been relieved from the heavy obligation of carrying on war at their own charge, and at the same time had retained an increased exemption from taxation, that is to say, they kept the compensation and got rid of the burden. Moreover, they enjoyed several other pecuniary advantages which their forefathers had

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never possessed; nevertheless they gradually became impoverished in the same degree that they lost the exercise and spirit of government. Indeed, it is to this gradual impoverishment that the vast sub-division of landed property which we have already remarked must be partly attributed. The nobles had sold their land piecemeal to the peasants, reserving to themselves only the seigniorial rights which gave them the appearance rather than the reality of their former position. Several provinces of France were filled with a poor nobility, owning hardly any land, and living only on seigniorial rights and rent-charges on their former estate.

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IV. In no part of Germany, at the close of the eighteenth century, was serfdom as yet completely abolished, and in the greater part of Germany the people were still literally *adscripti glebe* as in the middle ages. Almost all the soldiers, who fought in the armies of Frederic II and of Maria Theresa, were in reality serfs. In most of the German States, as late as 1788, a peasant could not quit his domain; and if he quitted it, he might be pursued in all places wherever he could be found, and brought back by force. In that domain he lived, subject to the seigniorial jurisdiction which controlled his domestic life and punished his intemperance or his sloth. He could neither improve his condition, nor change his calling, nor marry, without the good pleasure of his master. To the service of that master a large portion of his time was due. Labour rents (*corvées*) existed to their full extent, and absorbed in some of these countries three days in the week. The peasant rebuilt and repaired the mansion of the lord, carted his produce to market, drove his carriage, and went on his errands. Several years of the peasant's early life were spent in the domestic service of the manor house. The serf might, however, become the owner of the land, but his property always remained very incomplete. He was obliged to till his field in a certain manner under the eye of the master, and he could neither dispose of it nor mortgage it at will. In some cases he was compelled to sell its produce; in others, he was restrained from selling it. His obligation to cultivate the ground was absolute. Even his inheritance did not descend without deduction to his offspring: a fine was commonly subtracted by the lordship. I am not seeking out these provisions in obsolete laws. They are to be met with even in the Code framed by Frederic the Great, and promulgated by his successor at the very time of the outbreak of the French Revolution.

V. Nothing of the kind had existed in France for a long period of time. The peasant came and went, and bought and sold, and dealt and laboured, as he pleased. The last traces of serfdom could only be detected in one or two of the eastern provinces annexed to France by conquest; everywhere else the institution had disappeared; and, indeed, its abolition had occurred so long before, that even the date of it was forgotten. The researches of archæologists of our own day have proved that as early as the thirteenth century serfdom was no longer to be met with in Normandy.

VI. But in the condition of the people in France another and a still greater revolution had taken place. The French peasant had not only ceased to be a serf, he had become an owner of land. This fact is still at the present time so imperfectly established, and its consequences, as will

be presently seen, have been so remarkable, that I must be permitted to pause for a moment to examine it:—

(a). It has long been believed that the sub-division of landed property in France dates from the Revolution of 1789, and was only the result of that revolution. The contrary is demonstrable by every species of evidence.

(b). Twenty years at least before that revolution, agricultural societies were in existence which already deplored the excessive sub-division of the soil. "The division of inheritances," said M. de Turgot, about the same time, "is such that what sufficed for a single family is shared between five or six children. These children and their families can, therefore, no longer subsist exclusively by the land." Neckar said a few years later that there were in France an *immensity* of small rural properties. I have met with the following expressions in a secret report made to one of the provincial Intendants a few days before the revolution: "Inheritances are divided in an equal and alarming manner; and as every one wishes to have something of everything and everywhere, the plots of land are infinitely divided and perpetually sub-divided." Might not this sentence have been written in our days? * *

VII. Already (about 1789), as at the present time, the love of the peasant for property in land was intense, and all the passions which the possession of the soil has engendered in his nature were already inflamed. "Land is always sold above its value," said an excellent contemporary observer, "which arises from the passion of all the inhabitants to become owners of the soil. All the savings of the lower orders which elsewhere are placed out at private interest, or in the public securities, are intended in France for the purchase of land." Amongst the novelties which Arthur Young observed in France, when he visited that country for the first time, none struck him more than the great division of the soil among the peasantry. He averred that half the soil of France belonged to them in fee. "I had no idea," he often says, "of such a state of things;" and it is true that such a state of things existed at that time nowhere but in France, or in the immediate neighbourhood of France, *viz.*, in the districts of Germany which lay on the banks of the Rhone. * *

VIII. The effect of the revolution was not to divide the soil, but to liberate it for a moment. All these small land-owners were, in reality, ill at ease in the cultivation of their property, and had to bear many charges or easements on the land which they could not shake off. These charges were no doubt onerous. But the cause which made them appear insupportable was precisely that which might have seemed calculated to diminish the burden of them. The peasants of France had been released, more than in any other part of Europe, from the government of their lords by a revolution not less momentous than that which had made them owners of the soil. * *

IX. But what I am here concerned to remark is that throughout Europe at that time the same feudal rights, identically the same, existed, and that in most of the Continental States they were far more onerous than in France. I may quote the single instance of the seigniorial claim for labour. In France this right was unfrequent and mild; in Germany it was still universal and harsh. Nay, more; many of the rights of feudal origin which were held in the utmost abhorrence by the last generation

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of Frenchmen, and which they considered as contrary, not only to justice, but to civilisation,—such as tithes, inalienable rent charges, or perpetual dues, fines or heriots, and which were termed in the somewhat pompous language of the eighteenth century *the servitude of the soil*,—might all be met with at that time, to a certain extent, in England, and many of them exist in England to this day. Yet they do not prevent the husbandry of England from being the most perfect and the most productive in the world, and the English people is scarcely conscious of their existence. How comes it, then, that these same feudal rights excited in the hearts of the people of France so intense a hatred that this passion has survived its object, and seems therefore to be unextinguishable? The cause of this phenomenon is, that the French nobility had long since lost all hold on the administration of public affairs, except on one single point,—that, namely, of justice. On the one hand, the French peasant had become an owner of the soil, and on the other, he had entirely escaped from the government of the great landlords. Many other causes might doubtless be indicated, but I believe these two to be the most important.

X. If the peasant had not been an owner of the soil, he would have been insensible to many of the burdens which the feudal system had cast upon landed property. What matters tithe to a tenant-farmer? He deducts it from his rent. What matters a rent-charge to a man who is not the owner of the ground? What matter even the impediments to free cultivation to a man who cultivates for another?

XI. On the other hand, if the French peasant had still lived under the administration of his landlord, these feudal rights would have appeared far less insupportable, because he would have regarded them as a natural consequence of the constitution of the country. When an aristocracy possesses not only privileges but powers, when it governs and administers the country, its private rights may be at once more extensive and less perceptible. In the feudal times, the nobility were regarded pretty much as the Government is regarded in our own; the burdens they imposed were endured in consideration of the security they afforded. The nobles had many irksome privileges; they possessed many onerous rights; but they maintained public order; they administered justice; they caused the law to be executed; they came to the relief of the weak; they conducted the business of the community. In proportion as the nobility ceased to do these things, the burden of their privileges appeared more oppressive, and their existence became an anomaly.

XII. Picture to yourself a French peasant of the eighteenth century, or, I might rather say, the peasant now before your eyes, for the man is the same—his condition is altered, but not his character. Take him as he is described in the documents I have quoted—so passionately enamoured of the soil, that he will spend all his savings to purchase it, and to purchase it at any price. To complete this purchase he must first pay a tax, not to the Government, but to other land-owners of the neighbourhood, as unconnected as himself with the administration of public affairs, and hardly more influential than he is. He possesses it at last; his heart is buried in it with the seed he sows. This little nook of ground, which is his own in this vast universe, fills him with

pride and independence. But, again, these neighbours call him from his furrow, and compel him to come to work for them without wages. He tries to defend his young crop from their game; again they prevent him. As he crosses the river, they wait for his passage to levy a toll. He finds them at the market, where they sell him the right of selling his own produce; and when, on his return home, he wants to use the remainder of his wheat for his own sustenance—of that wheat which was planted by his hands, and has grown under his eyes—he cannot touch it till he has ground it at the mill and baked it at the bakehouse of the same men. A portion of the income of his little property is paid away in quit-rents to them also, and these dues can neither be extinguished nor redeemed.

XIII. Whatever he does, these trouble-some neighbours are everywhere on his path, to disturb his happiness, to interfere with his labour, to consume his profits.

This too faithfully describes a radical error of Lord Cornwallis, who found existing as zemindars a class of persons who were administrators of districts and of the police; attracted to them by their official status, Lord Cornwallis declared these zemindars proprietors of the soil, in the same series of regulations by which he divested them of administrative functions, and sowed thereby the seeds of that disaffection which, as M. de Tocqueville points out, the cultivating proprietors could not but feel towards feudal lords, on the latter ceasing to exercise over them any semblance of official authority, and ceasing to perform in the midst of them any of those duties of administration which the cultivators could regard as an equivalent for the rent paid to the zemindars.

6.—PRUSSIA.

MR. R. B. D. MORIER, (*Cobden Club Essays*).

I. (a). This is the first period of the Teutonic community. Its characteristic features are that there are two distinct communities—an *agricultural* community, and a *political* community—inseparably identified with each other, the rights conferred by the one being correlative to the duties imposed by the other. We may describe it as a period of *land-ownership* and *equal possession*, in which the freeman is a “miles” in virtue of being a land-owner.

(b). The second period can be described as the period of *land tenure*, and of *unequal possession*, in which the feudal tenant is not a “miles” in virtue of being a *land-owner*, but a *landholder* in virtue of being a “miles.” * *

II. (a). The application of the *feudal* system in Germany was necessarily a much slower process than in the Roman provinces, where it was, as it were, called into life by the exigencies of conquest. In the one case, the raw material that it had to work up consisted of free *allodial* proprietors, who deemed themselves the equals of the king, and whose personal status was legally higher than that of his proudest Dienstmannen; in

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the latter case it consisted principally of conquered Romans and Provincials who were glad to get back their lands on any terms.

(b): In Germany, therefore, it was an economical necessity rather than a political convulsion which brought about the change. As population increased, more and more townships were settled on the common lands, the proportion between pastoral as compared with agricultural wealth decreased, and the ordinary freeman was gradually reduced to little more than what his lot in the arable mark brought him in. Simultaneously with this diminution of his means rose the cost of his equipment for the field and the strain put upon his resources by having to maintain himself during the long summer and winter campaigns, which were now the rule. Soldiering under Charlemagne against the Saracens in Spain, or the Huns on the Danube, was different work from an autumn raid across the Rhine, after the harvest was got in. Accordingly, as early as Dagobert's time, we find the possession of five allotments to be the minimum qualification required for a full-armed "miles."

(c). Hence, partly by his poverty, partly by the pressure, often amounting to force, brought to bear upon him by the lords who wished to increase their demesne lands, the freeholder was little by little reduced to the condition of an unfreeholder. By "commending" himself ("*commendatio*," "*traditio*") to a superior lord, that is, by surrendering the "*dominium directum*" of his "*allodium*," and receiving back its "*dominium utile*," the freeman lost his personal rights, but obtained in return protection against the State, *i.e.*, against the public claims that could be made upon him in virtue of his being a full member of the political community. According to the nature of his tenure, he had to render military service (no longer as a national duty, but as a personal debt) to his superior, and in return was maintained by his lord when in the field; or, if his tenure was a purely agricultural one, and it is with these we are concerned, he was exempt from military service, and only rendered agricultural service.

(d). In this way, as generation followed upon generation, the small free allodial owners disappeared, and were replaced by unfreeholders. But the memory of their first estate long lived amongst the traditions of the German peasantry, and it required centuries before the free communities, who out of dire necessity had, by an act of their own, surrendered their liberties into the hands of the lord of the manor, sank to the level of the servile class settled upon their demesnes proper by the lords of the soil. * *

III. (a). In the peasant's war which followed the Reformation, the Bauer made a desperate attempt to recover his lost liberties; and in the record of grievances, upon the basis of which he was ready to treat, he showed how accurate was his recollection of the past, and how well he knew the points on which the territorial lords had robbed him of his just rights.

(b). The thirty years' war gave the final blow. With exceptions here and there, the tillers of the soil became a half servile caste, and were more and more estranged from the rest of the community, until, with the humanitarian revival at the close of the last century, they became to philanthropists objects of the same kind of interest and inquiry which negroes have been to the same class of persons in our day. * *

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(1).—MR. S. LAING—OBSERVATIONS IN EUROPE (*Second Series, 1850*).

(a). The social state of Prussia, up to the conclusion of the peace of Tilsit in July 1807, was, like that of the rest of Germany, essentially feudal. The land was possessed by a class of nobles who held the peasants on their estates as serfs or *leibeigen* people, *adscripti glebæ*.

(b). The *leibeigen* peasant worked every day, or a certain number of days weekly, on the farm of the proprietor or his tacksman, and had a hut to live in and a spot of land to cultivate for his own subsistence at spare hours.

(c). Another class of peasants, a little above the condition of *leibeigen*, held a larger occupancy of land, for which they paid certain fixed services of carts, horses, and ploughs, to the proprietor or tacksman, and certain payments in *naturalia* of the crops they raised. These payments, being of old standing and fixed by usage at the highest rate they could safely or profitably be raised to, were of the nature of quit-rents or feu duties, although not in general established by writings or feu charters.

(d). There were tacksmen or middlemen who took on lease a district or barony, with its village and peasants from the noble proprietor, paid him a money rent, and gathered in and turned to account the labour services, payments in kind, and whatever they could make out of the peasantry leased to them, and farmed the *manis* or demesne lands of the estate, with the labour of the *leibeigen* and the services of the other peasants. The same system existed in the north of Scotland until a late period.

(e). The nobles alone, in the greater part of Germany, could purchase and hold land that was free from such servitudes; they also were exempt from all taxes, unless a personal tax, called a knight's horse, fixed at forty-eight thalers; they were exempt from military service in person after the general establishment of standing armies instead of feudal services in the field.

(f). The peasant holdings or feued lands, held under services, often of a personal and even degrading kind, to the superior or feudal lord, were the only estates or landed properties that a capitalist not born noble could purchase or hold.

(g). The nobles had to support their peasants in cases of destitution from accidents of flood or fire, of failure of crops, of cattle murrain, and to provide them with medical assistance and medicines in cases of sickness. The principle of a poor-rate was thus acknowledged, even in this social state, and the liability of the land to subsist the population engendered on it.

(h). The peasant could not remove from the estate to which he belonged, without leave from his lord. He might be punished as a deserter, and could be reclaimed from any place he might fly to, unless he had enlisted in the army or had escaped to one of the free cities, such as Hamburg, Frankfort, Lubbeck, in which, after a year and a day's residence, he was entitled to protection. This was no dormant right of the middle ages to the property of *leibeigen* peasants as slaves. In Holstein itself, the focus of the flame for German liberty, the peasants were only liberated from the thralldom of *leibeigenschaft* about the beginning of the present century. Patrols of dragoons were kept on all the

roads to arrest leibeigen peasants attempting to desert from their baronial owners and to reach Hamburg or Lubeck. This social state was obviously not suited to the nineteenth century, or to a struggle for the maintenance of feudal institutions against republican armies. * * It was necessary for the safety of the country to reconstruct society. The rights of property had to give place to the rights of the community, to security, and to a social condition worth defending.

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(2).—MR. MORIER.

(a). At the period in question (before the Legislation of 1807), the entire land of Prussia (then, it must be remembered, consisting of the few provinces left to the King of Prussia by the peace of Tilsit) was distributed amongst three classes of society, carefully kept asunder, not by usage only, but by strict legal enactment,—nobles, peasants, and burghers. In other words, it was held by knights' tenure, villein tenure, and a sort of civil tenure which had grown up out of the privileges of town municipalities. These classes were distinct castes. Their personal status was reflected in the land held by them, and conversely the land held determined the status of the holder.

(b). The noble could follow no avocations but those of his caste. He could administer his estate, and serve the king either in a civil or military capacity. He could not occupy himself with trades or industries. He could acquire nobles' land, and therewith manorial rights over land held under villein tenure; but he could not acquire burgher land, or the *dominium utile*, i.e., the possession of peasant land.

(c). The burgher could not acquire nobles' land or peasants' land. The military profession was closed to him, as well as the higher civil employments.

(d). The condition of the peasant differed widely in the different provinces, and in the different parts of the same province. It was a mirror in which almost every phase of mediæval history was reflected. There was this feature, however, common to all peasant holdings: that they were not isolated farms, but united in a "commonalty," and that these "commonalties" stood under the jurisdiction of the manor.

(e). The rural area of Prussia was consequently divided into two kinds of districts. The Gutsbezirk or manorial district proper, consisting of the demesne lands, cultivated by the manorial proprietor, and in which he exercised the functions of a police magistrate directly, and the township of the peasant community, with its arable mark and its common mark, in which a Schulze (contracted from Schultheiss), usually an hereditary office, or one inseparable from a particular Hof, exercised the police authority in the name of, and under the supervision and control of, the lord of the manor.

(f). The different communities held by different kinds of tenure varying in an ascending scale from those in which the allottees were in a state of personal villeinage, with unlimited services, to those in which they were free-settlers, who, though under the jurisdiction of the manor, and paying dues to it in virtue of that jurisdiction, were yet owners of their lots. These distinctions generally may be traced to the original difference in the nature of the land held. In the one case, the communities had originally been slave communities, settled

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upon the demesne lands proper of large proprietors, and had gradually emerged to the comparatively higher level of villeinage, or they were communities of freemen or dependents, "liti," settled in the same way, who had gradually sunk to a state of villeinage. In the other case, they were originally the allodial owners of the land held by them, who had surrendered their rights of full ownership to the manorial lords on distinct stipulations, or they had retained the ownership of their land, and were only subject to the jurisdiction of the manor.

(g). The status of villeinage differed according as the villein was *leibeigen* (i.e., as his lord had rights of property in his body), or only "*erbunterthanig*," i.e., in a state of hereditary subjection to the manor, "*adscripti glebæ*." In its worst form the villein could be held to unlimited service, and could be deprived of his holding and located in another. * * This extreme form was, however, the exception to the rule. It occurred mostly in the more remote provinces. The milder form differed from the former in the services to be performed and the dues to be paid, being limited by local custom, and in a greater freedom in the disposal of the holding. The villein knew what work he and his team would have to perform in the course of the year, the number of years his children would have to serve in the household of the lord, the tax he would have to pay on their marriage, the amount of the mortuary dues which at his death the lord would have a right to. He also could buy his freedom at a fixed price, and, with the permission of his lord, dispose of his holding.

(h). The free peasant differed from the villein in having no personal dues to pay, and in his services and dues being usually recorded in writing in the grants made to him, and therefore bearing the character of a legal contract. He could not, however, acquire by purchase or inheritance other than peasant land, nor could he change his position by changing his country life for a city life; nor could he in the country exercise any trade or calling but that of agriculture.

(i). The land cultivated by the peasant, therefore, was divided into two principal categories:—

(1). That in which he had rights of property.

(2). That in which he had only rights of usufruction.

In both cases services were rendered and dues were paid in kind or money to the manor. But in the first case, these services and dues may be considered to have had a public, in the latter case a private, origin.

(3). As regards the land in which the peasant had only rights of usufruction, it was divided into two principal categories; viz.:

Land in which the peasant had hereditary rights of usufruction, and could transmit his holding to his descendants and his collaterals, according to the common law of inheritance.

(4). Land in which the occupier was only a tenant for life, or for a term of years, or at will.

In neither case, however, could the landlord re-enter on this land.

(j). The lords of the manor had been deprived of this right of re-entry, if it ever existed, by various edicts of the former Hohenzollern kings. Frederick the Great imposed a fine of a hundred ducats on any landlord who appropriated to his own use any land held by his peasants. At last a general law was passed on the subject.

(k). The manors were respectively held by the Crown, by corporations, lay and ecclesiastical, and by individual nobles. But whoever was the occupant, the functions of the manor in the body politic remained the same. The term implied a house with farm buildings (*the manor in the community*, the other manors having sunk to *mansi*, "messuages"); demesne lands cultivated by the labour of the peasants under its jurisdiction; rights of various kinds over the persons of these peasants and the lands occupied by them; correlative duties in the way of maintaining paupers, furnishing wood for the building and repair of the peasants' farm buildings, in some cases furnishing the stock of the farm, the building and endowing schools, &c. It *did not* imply the right of reversion on the lands occupied by the peasants.

(l). Lastly, the entire burdens of the State, so far as they rested on real estate, were borne by the peasant land.

VIII. The edict of 9th October 1807 declared every inhabitant free to own landed property of every kind and description, without distinction of noble, burgher, or peasant owners or noble, burgher, or peasant lands, and abolished villeinage. "It is to be understood, however, that these freemen remain subject to all obligations flowing from the possession of land or from particular contracts to which, as freemen, they can be subjected." But while the edict of 1807 removed disabilities, it created no new forms of property. The lord was still owner of the peasants' land, but had no right to its possession. The peasant was free, but was not master of his labour. The Legislature of 1811 set itself to substitute allodial ownership for feudal tenure. The first part of the edict deals with peasant holdings in which the tenant has hereditary rights; the second with holdings in which the tenant has no hereditary rights.

PART I.

(a). All tenants of hereditary holdings, *i.e.*, holdings which are inherited according to the common law, or in which the lord of the manor is bound to select as tenant one or other of the heirs of the last tenant, *whatever the size of the holding*, shall by the present edict become the proprietors of their holdings, after paying to the landlord the indemnity fixed by this edict. On the other hand, all claims of the peasant on the manor, for the keeping in repair of his farm buildings, &c., shall cease.

(b). We desire that landlords and tenants should of themselves come to terms of agreement, and give them two years from the date of this edict to do so. If within that time the work is not done, the State will undertake it.

(c). The rights to be commuted may be thus generally classed:—

(I). Rights of landlord—

1. Right of ownership ("*dominium directum*").
2. Claim to services.
3. Dues in money and kind.
4. Dead-stock of the farms.
5. Easements, or servitudes in the land held.

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(II). Rights of the tenant¹—

1. Claim to assistance in case of misfortune.
2. Right to gather wood, and other forest rights, in the forest of the manor.
3. Claim upon the landlord for repairs of buildings.
4. Claim upon the landlord, in case tenant is unable to pay taxes.
5. Pasturage rights on demesne lands or forests.

(d). Of these different rights, only a few, *viz.*, the dues paid in kind or money, the dead-stock, and the servitudes, are capable of exact valuation. The others can only be approximately estimated. To obtain, therefore, a solid foundation for the work of commutation, and not to render it nugatory by difficulties impossible to be overcome, we deem it necessary to lay down certain rules for arriving at this estimate, and to deduce those rules from the general principles laid down by the laws of the State.

(e). These principles are:—

- (1). That in the case of hereditary holdings, neither the services nor the dues can under any circumstances be raised.
- (2). That they must, on the contrary, be lowered if the holder cannot subsist at their actual rate.
- (3). That the holding must be maintained in a condition which will enable it to pay its dues to the State.

(f). From these three principles, as well as from the general principles of public law, it follows that the right of the State, both to ordinary and extraordinary taxes, takes precedence of every other right, and that the services to the manor are limited by the obligation which the latter is under to leave the tenant sufficient means to subsist and pay taxes.

(g). We consider that both these conditions are fulfilled when the sum total of the dues and services rendered to the manor do not exceed one-third of the total revenue derived by a hereditary tenant from his holding. Therefore, with the exceptions to be hereafter described, the rule shall obtain—

That in the case of hereditary holdings the lords of the manor shall be indemnified for their rights of ownership in the holding, and for the ordinary services and dues attached to the holding, when the tenants shall have surrendered one-third portion of all the lands held by them, and shall have renounced their claims to all extraordinary assistance as well as to the dead-stock, to repairs, and to the payment on their behalf of the dues to the State when incapable of doing so.

PART II.

(a). In the cases of holdings at will, or for a term of years, or for life, the landlord gets an indemnity of one-half of the holding under much the same conditions as in the case of the hereditary holdings. When the conditions differ, they do so in favour of the lord of the manor.

¹ It is worthy of remark that the tenant's "*dominium utile*," or right of possession, is not recorded as a set-off against the "*dominium directum*" of the lord of the manor. The fact is, this right of possession is something so self-understood, that it never seems present to the mind of the legislator. The "*dominium directum*" is something quite different, for it represents an aggregation of all kinds of different rights. These rights he has to sell to the peasant, and the peasant buys them with the only thing he possesses, *viz.*, his land.

IX. (a). What the statesman did in Prussia in 1811 was this : they took half or a third of the land possessed by the tenants of Prussia, and handed it over in full possession to the landlords of Prussia. The land occupied by these tenants was land on which, *except in case of devastation and in virtue of a judgment passed by a Court of Law*, the lord of the manor had no right of re-entry. What the law of 1811 did was to force the lord of the manor to sell his manorial overlordship to the copyholder for one-half or one-third of the copyhold. By this process he was put in possession of more land than he was possessed of before. What he was deprived of was labour. The tenant lost one-half or one-third of the land he possessed before, but obtained the *dominium directum* as well as the *dominium utile* over the remaining half or two-thirds ; what was, however, much more important, he got back the free use of his own labour. The landlord sold labour and bought land ; the tenant sold land and bought labour. All the essential features of the transaction would have remained the same even if the "*dominium directum*" of the landlord had not been passed over to the peasant, for an overlordship of this kind, deprived of its material contents, would have been a mere meaningless form, like the *dominium eminens* of the Crown in England. The "Edict for the better cultivation of the land," published on the same day as the Edict for the regulation of the relations between the lords of the manor and their peasants, provided for the better regulation of other branches of the agricultural system. The ruling idea of the "Edict for the better cultivation of the land," as of its predecessor, and indeed of the whole legislation connected with the names of Stein and Hardenberg, is to enfranchise not the owner of land merely, but likewise the land owned by him, and to remove every impediment in the way of the soil finding its way out of hands less able to cultivate it into those better able to cultivate it. * * Without this power of selling portions of his property, the proprietor is apt to sink deeper and deeper into debt, and in proportion as he does so the soil is deprived of its strength. * * But there is yet another advantage springing from this power of piecemeal alienation which is well worthy of attention, and which fills our paternal heart with especial gladness. It gives, namely, an opportunity to the so-called small folk (Kleine Leute), cottiers, gardeners, boothmen, and day-labourers, to acquire landed property, and little by little to increase it. The prospect of such acquisition will render this numerous and useful class of our subjects industrious, orderly, and saving, inasmuch as thus only will they be enabled to obtain the means necessary to the purchase of land ; many of them will be able to work their way upward and to acquire property, and to make themselves remarkable for their industry. The State will acquire a new and valuable class of industrious proprietors ; by the endeavour to become such, agriculture will obtain new hands, and by increased voluntary exertion, more work out of the old ones.

(b). The edict next enacts, as a supplementary measure to the "Edict for the regulation of the relations between lords of the manor," that in the case of hereditary leaseholds (Erbpächte), the services and fines may be commuted into rent-charges, and these rent-charges redeemed by a capital payment, calculated at 4 per cent.

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X. (a). The legislation of 1850 was in the highest degree prolific; but we need only concern ourselves with the two great laws of the 2nd of March: (1) the law for the redemption of services and dues, and the regulation of the relations between the lords of manor and the peasants; (2) the law for the establishment of rent banks.

(b). The former of these laws abrogated the "*dominium directum*," or overlordship of the manor, without compensation; so that from the day of its publication all hereditary holders throughout the Prussian monarchy, irrespective of the size of their holdings, became proprietors, subject, however, to the customary services and dues, which by the further provisions of the law were commuted into fixed money rents, calculated on the average money value of the services and dues rendered and paid during a certain number of years preceding. By a further provision these rent charges were made compulsorily redeemable, either by the immediate payment of a capital equivalent to an eighteen years' purchase of the rent charge, or by a payment of $4\frac{1}{2}$ or 5 per cent. for $56\frac{1}{2}$ or $41\frac{1}{2}$ years, on a capital equivalent to 20 years' purchase of the rent-charge.

XI. (a). The law for the establishment of rent banks provided the machinery for this wholesale redemption. By it the State, through the instrumentality of the rent banks, constituted itself the broker between the peasants by whom the rents had to be paid and the landlords who had to receive them.

(b). The bank established in each district advanced to the landlords, in rent debentures paying 4 per cent. interest, a capital sum equal to 20 years' purchase of the rent. The peasant, along with his ordinary rates and taxes, paid into the hands of the district tax-collector each month one-twelfth part of a rent calculated at 5 or $4\frac{1}{2}$ per cent. on this capital sum, according as he elected to free his property from encumbrance in $41\frac{1}{2}$ or $56\frac{1}{2}$ years, the respective terms within which, at compound interest, the 1 or the $\frac{1}{2}$ per cent. paid in addition to the 4 per cent. interest on the debenture would extinguish the capital.

7. The reform of land tenures regenerated Prussia; it was brought about by the active intervention of the State, under the direction of statesmen who gained world-wide renown by their wisdom and sagacity. Among the preliminary measures of reform was a stoppage of further enhancements of rent; and among the principal means of completing the reform were the State's intervention between landlord and cultivator, for settling the terms on which the latter was to buy out the feudal rights of the former, and the State's instrumentality in promoting the formation of banks for advancing to cultivators the purchase money for redeeming their obligations to their feudal lords. The statesmen of Prussia were animated throughout their measures of reform by a deep-rooted conviction that for securing and preserving the independence of the nation, and promoting the agriculture and well-being of the country, and the moral progress and material prosperity of the people, it was indispensable that the cultivators of the land should be its proprietors.

8.—BAVARIA.

REPORT BY MR. H. P. FENTON (*20th January 1879*).

I. (a). With respect to the question of the "creation of freehold," a highly important measure (already referred to incidentally in the course of this report) bearing directly upon this question, and which may be said to have inaugurated an entirely new era as regards the tenure of land in this country, was passed by the Bavarian Legislature during the Session of 1848, and has since been the law of the land. This measure, known as the Land Charges Redemption Law ("*Grund Renten Ablösungs Gesetz*"), may be broadly described as having put an end to all land tenures limited by seigniorials or other rights, and established in their stead a universal system of freehold tenure.

(b). It would be superfluous to enter into an account of all the details of this complicated enactment, especially as regards the infinite variety of manorial charges and dues—dating back in many cases to a remote feudal period—with which the law had to deal, for the proper definition of which in English I can indeed not pretend to possess a sufficient knowledge of technical and legal phraseology.

(c). But the following outline will, I trust, suffice to convey an idea of the general character of this very important measure, and of the mode in which it was carried out.

II. I should premise by stating that, up to the period at which the Act in question was passed, the state of things, with reference to the tenure of land in Bavaria generally, and especially in the "old provinces," had remained (with some not very important modifications) much what it had been two or three centuries previously.

Under this state of things a large proportion of the peasant-proprietors, or more properly peasant-occupiers, had only a limited right of ownership in their lands, that is to say, they held them in some cases under the Crown, but more frequently under the so-called ground landlords ("*Grund Herren*"), or lords of the manor, subject to charges of various descriptions, but consisting chiefly of payments in money at fixed periods, tithes of the most varied character, fines on a change of occupancy by death, and personal servitudes in the form of a certain number of days' work, with or without the peasant's cattle, the providing of beaters for the chase, &c.

In addition to these manorial and seigniorial rights, there existed in many cases, in favour of the ground landlord, that of civil jurisdiction and police over the whole extent of the manor, the exclusive right to the game on the peasant's lands, and a variety of personal privileges and exemptions.

III. The law of 1848 effected a radical change in this state of things, its chief provisions being to the following effect:—

(1). That after the 1st October 1848, all right of civil jurisdiction and police, previously vested in the ground landlords, should ~~be~~ entirely, and thenceforth be exercised exclusively by the ~~competent~~ Government authorities.

(2). That after the 1st January 1849, personal servitudes ~~of~~ description rendered in respect of the occupancy of lands, ~~should~~

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should be absolutely abolished, without any indemnity being made to the ground landlord.

(3). That every peasant should be competent to buy off or commute, by means of a money payment once for all, or a yearly sum to be paid during a certain number of years, all charges, tithes, or burdens, of whatsoever description, subject to which he held his land from the ground landlord; and that, having done so, he should become the freehold proprietor of the land.

IV. The mode and conditions of this commutation were fixed as follows:—

The net annual money value of the burdens to be commuted was to be ascertained and fixed by a commission specially appointed for this purpose for each administrative district, the basis assigned for the valuation of all tithes in kind being the average of the ascertained value during the period of eighteen years from 1828 to 1845.

The value having been thus fixed in the form of an annual money payment, the peasant was in each case left at liberty to redeem this payment in one or other of the three following modes:—

(1). By paying down once for all to his landlord a sum of money equivalent to eighteen times the amount at which his yearly money payment had been assessed by the Commissioners; or,

(2). By undertaking to pay to the ground landlord annually, during a period of thirty-four years, the whole, or, during forty-three years, nine-tenths, of the annual sum so assessed, security in the form of a hypothecation on his land being given by the peasant for the due payment of that sum; or,

(3). By creating, in favour of the State, a mortgage bearing 4 per cent. interest on his land, for a sum representing (as in the first-mentioned mode of commutation) eighteen times the amount of the annual assessed payment.

In either of the two first-named alternatives, the process of commutation was complete as between the peasant and the ground landlord, and the State did not intervene further in the transaction.

In the last named alternative, the transaction was between the peasant and the State, and the latter, having obtained the mortgage on the peasant's land, undertook to indemnify the ground landlord for the dues or tithes which he relinquished.

V. For the latter purpose the law authorized the Government to create "Land Charge Redemption Debentures," bearing 4 per cent. interest, and to make over to each ground landlord a sum, in these debentures, reckoned at their full par value, equal to twenty times the annual value, as fixed by the Commissioners, of the land charges or tithes to be commuted.

It will thus be seen that, whilst the peasants were permitted to compound for their land burdens, by means of mortgages created in favour of the Government, on the basis of eighteen years' purchase of those burdens, the Government undertook to indemnify the ground landlords on the basis of twenty years' purchase, the State having been consequently a loser under this arrangement to the extent of the difference between the two rates assumed.

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It appears that towards the close of the eighteenth century and during the nineteenth century every State of note in Continental Europe liberated the cultivators of land from the feudal services and other burdens which, till then, had deprived them of the fruits of their industry. In France the liberation was effected by a revolution; in the other countries, by the active intervention of the State, and the careful thought and bold and wise legislation of statesmen. During the same period, the status of the cultivating proprietors in Bengal has been tending towards tenancy-at-will and cottierism.

APPENDIX XXVII.

SERFDOM IN RUSSIA, AND ITS ABOLITION.

(Extract from Mr. D. Muckenzie Wallace's *Book on Russia*, 1877.)

(1). (a). Ivan's household was a good specimen of the Russian peasant family of the old type. Previous to the emancipation in 1861, there were many households of this kind, containing the representatives of three generations. All the members, young and old, lived together, in patriarchal fashion, under the direction and authority of the head of the house, called usually *khozäin*, that is to say, administrator; or, in some districts, *bolshák*, which means literally "the big one." Generally speaking, this important position was occupied by the grandfather, or, if he was dead, by the eldest brother; but this rule was not very strictly observed. If, for instance, the grandfather became infirm, or if the eldest brother was incapacitated by disorderly habits or other cause, the place of authority was taken by some other member—it might be by a woman, who was a good manager, and possessed the greatest moral influence. * *

(b). The house, with its appurtenances, the cattle, the agricultural implements, the grain and other products, the money gained from the sale of these products—in a word, the house and nearly everything it contained—was the joint-property of the family. Hence nothing was bought or sold by any member—not even by the 'big one' himself, unless he possessed an unusual amount of authority—without the express or tacit consent of the other grown-up males; and all the money that was earned was put into the common purse. When one of the sons left home to work elsewhere, he was expected to bring or send home all his earnings, except what he required for food, lodgings, and other *necessary* expenses; and if he understood the word "necessary" in too lax a sense, he had to listen to very plain-spoken reproaches when he returned. During his absence, which might last a whole year or several years, his wife and children remained in the house as before; and the money which he earned was probably devoted to the payment of the family taxes.

(c). The peasant household of the old type is thus a primitive labour association, of which the members have all things in common; and it is not a little remarkable that the peasant conceives it as such rather than as a family. This is shown by the customary terminology and by the law of inheritance. The head of the house is not called by any word corresponding to *pater-familias*, but is termed, as I have said, *khozäin*, or administrator, a word that is applied equally to a farmer, a shop-keeper, or the head of an industrial undertaking, and does not at all convey the idea of blood-relationship.

(d). The law of inheritance is likewise based on this conception. When a household is broken up, the degree of blood-relationship is not taken into consideration in the distribution of the property. All the adult male members share equally. Illegitimate and adopted sons, if they

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have contributed their share of labour, have the same rights as the sons born in lawful wedlock. The married daughter, on the contrary—being regarded as belonging to her husband's family—and the son who has previously separated himself from the household, are excluded from the succession. Strictly speaking there is no succession or inheritance whatever, except as regards the wearing apparel, and any little personal effects of a similar kind. The house and all that it contains belong, not to the *khozain*, but to the little household community; and consequently, when the *khozain* dies, and the community is broken up, the members do not inherit, but merely appropriate individually what they had hitherto possessed collectively. Thus there is properly no inheritance or succession, but simply liquidation and distribution of the property among the members.

Ibid., page 139.

(2). (a). The custom of living in large families has many decided economic advantages. Each adult peasant possesses, as I shall hereafter explain, a share of the communal land; but this share is not sufficient to occupy all his time and working power. One married pair can easily cultivate two shares—at least in all provinces where land is not very abundant. Now, if a family is composed of two married couples, one of the men can go elsewhere and earn money, whilst the other, with his wife and sister-in-law, can cultivate the two combined shares of land. If, on the contrary, the family consists merely of one pair, with their children, the man must either remain at home, in which case he may have difficulty in finding work for the whole of his time, or he must leave home, and entrust the cultivation of his share of the land to his wife, whose time must be in great part devoted to domestic affairs.

(b). In the time of serfage the proprietors clearly perceived these and similar advantages, and compelled their serfs to live together in large families. No family could be broken up without the proprietor's consent, and this consent was not easily obtained, unless the family had assumed quite abnormal proportions, and was permanently disturbed by domestic dissension. In the matrimonial affairs of the serfs, too, the majority of the proprietors systematically exercised a certain supervision, not necessarily from any paltry meddling spirit, but because their material interests were thereby affected. A proprietor would not, for instance, allow the daughter of one of his serfs to marry a serf belonging to another proprietor—because he would thereby lose a female labourer—unless some compensation were offered. The compensation might be a sum of money, or the affair might be arranged on the principle of reciprocity, by the master of the bridegroom allowing one of his female serfs to marry a serf belonging to the master of the bride.

(c). In these large families, the evil of family dissension exists in an aggravated form. The females comprising a large household not only live together, but have nearly all things in common. Each member works, not for himself, but for the household, and all that he earns is expected to go into the family treasury. The arrangement almost inevitably leads to one of two results—either there are continual dissensions, or order is preserved by a powerful domestic tyranny, infinitely worse than serfage.

(d). It was quite natural, therefore, that when the authority of the landed proprietors was abolished in 1861, the large peasant families

almost all fell to pieces. The arbitrary rule of the *khozäin* was based on and maintained by the arbitrary rule of the proprietor, and both naturally fell together. Households like that of our friend Ivan have been preserved only in exceptional cases, where the head of the house happened to possess an unusual amount of moral influence over the other members.

(e). This change has unquestionably had a prejudicial influence on the material welfare of the peasantry; but it must have added considerably to their domestic comfort, and can scarcely fail to produce good moral results. For the present, however, the evil consequences are by far the most prominent. Every married peasant strives to have a house of his own, and many of them, in order to defray the necessary expenses, have been obliged to contract debts. This is a very serious matter. Even if the peasants could obtain money at 5 or 6 per cent., the position of the debtors would be bad enough; but it is in reality much worse, for the village usurers consider 20 or 25 per cent. a by no means exorbitant rate of interest. Thus the peasant who contracts debts has a hard struggle to pay the interest in ordinary times, and when some misfortune overtakes him—when, for instance, the harvest is bad or his horse is stolen—he probably falls hopelessly into pecuniary embarrassments. I have seen peasants not specially addicted to drunkenness or other ruinous habits, sink to a helpless state of insolvency. Fortunately for such insolvent debtors, they are treated by the law with extreme leniency. Their houses, their share of the common land, their agricultural implements, their horse—in a word, all that is necessary for their subsistence—is exempt from sequestration. The Commune may, however, subject them to corporal punishment if they do not pay their taxes; and in many other respects the position of a peasant, who is protected against utter destitution merely by the law, is very far from being enviable. * * *

(3). Such is the ordinary life of the peasants who live by agriculture; but many of the villagers live occasionally or permanently in towns. Probably the majority of the peasants in this part of Russia have at some period of their lives gained a living in some other part of the country. Many of the absentees spend regularly a part of the year at home, whilst others visit their families only occasionally, and, it may be, at long intervals. In no case, however, do they sever their connection with their native village. The artisan who goes to work in a distant town never takes his wife and family with him; and even the man who becomes a rich merchant in Moscow or St. Petersburg remains probably a member of the Village Commune, and pays his share of the taxes, though he does not enjoy any of the corresponding privileges. Once I remember asking a rich man of this kind, the proprietor of several large valuable houses in St. Petersburg, why he did not free himself from all connection with his native Commune with which he had no longer any common interests. His answer was, "It is all very well to be free, and I don't want anything from the Commune now; but my old father lives there, my mother is buried there, and I like to go back to the old place sometimes. Besides, I have children, and our affairs are commercial. Who knows but my children may be very glad some day to have a share of the communal land?"

Chapter VII,
pages 153-54.

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Chapter VIII,
page 183.

(4). (a). The peasant family of the old type is, as we have just seen, a kind of primitive association, in which the members have nearly all things in common. The village may be roughly described as a primitive association on a larger scale.

(b). Between these two social units there are many points of analogy. In both there are common interests and common responsibilities. In both there is a principal personage, who is, in a certain sense, ruler within, and representative as regards the outside world; in the one case called *khozäin*, or head of the household, and in the other *starosta*, or village elder. In both the authority of the ruler is limited; in the one case by the adult members of the family, and in the other by the heads of households. In both there is a certain amount of common property; in the one case the house and nearly all that it contains, and in the other the arable land and pasturage. In both cases there is a certain amount of common responsibility; in the one case for all the debts, and in the other for all the taxes and communal obligations. And both are protected, to a certain extent, against the ordinary legal consequences of insolvency; for the family cannot be deprived of its house or necessary agricultural implements, and the Commune cannot be deprived of its land by importunate creditors.

(c). On the other hand, there are many important points of contrast. The Commune is of course much larger than the family, and the mutual relations of its members are by no means so closely interwoven. The members of a family all farm together, and those of them who earn money from other sources are expected to put their savings into the common purse; whilst the households composing a Commune farm independently, and pay into the common treasury only a certain fixed sum.

er VIII,
184-85.

(d). From these brief remarks the reader will at once perceive that a Russian village is something very different from a village in our sense of the term, and that the villagers are bound together by ties quite unknown to the English rural population. The families in an English village are isolated as to their respective interests and pursuits. But amongst the families composing a Russian village such a state of isolation is impossible. The heads of households must often meet together, and consult in the village assembly, and their daily occupations must be influenced by the communal decrees. They cannot begin to mow the hay or plough the fallow field until the village assembly has passed a resolution on the subject. If a peasant becomes a drunkard, or takes some equally efficient means to become insolvent, every family in the village has a right to complain, not merely in the interests of public morality, but from selfish motives, because all the families are collectively responsible for his taxes. For the same reason, no peasant can permanently leave the village without the consent of the Commune; and this consent will not be granted until the applicant gives satisfactory security for the fulfilment of all his actual and future liabilities. If a peasant wishes to go away for a short time, in order to work elsewhere, he must obtain a written permission, which serves him as a passport during his absence; and he may be recalled at any moment by a communal decree. In reality, he is rarely recalled so long as he sends home regularly the full amount of his taxes, including the dues which he has to pay for the temporary passport; but, sometimes, the Commune

use the power of recall for the purpose of extorting money from the absent member. If it becomes known, for instance, that an absent member receives a good salary in one of the towns, he may one day receive a formal order to return at once to his native village, and be informed at the same time unofficially that his presence will be dispensed with if he will send to the Commune a certain amount of money. The money thus sent is generally used for convivial purposes. * *

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(e). In order to understand the Russian village system, the reader must bear in mind these two important facts—the arable land and the pasture land belong not to the individual houses, but to the Commune; and all the households are collectively and individually responsible for the entire sum which the Commune has to pay annually into the imperial treasury.

(5). (a). According to the theory of government and administration, all male peasants, in every part of the empire, are inscribed in census lists, which form the basis of the direct taxation. These lists are revised at irregular intervals, and all males alive at the time of the "revision," from the new-born babe to the centenarian, are duly inscribed. Each Commune has a list of this kind, and pays to the Government an annual sum proportionate to the number of names which the list contains, or, in popular language, according to the number of "revision souls." During the intervals between the revisions, the financial authorities take no notice of the births and deaths. A Commune, which has a hundred male members at the time of the revision, may have, in a few years, considerably more or considerably less than that number; but it has to pay taxes for a hundred members all the same, until a new revision is made for the whole empire.

(b). Now, in Russia, so far at least as the rural population is concerned, the payment of taxes is inseparably connected with the possession of land. Every peasant who pays taxes is supposed to have a share of the arable land and pasturage belonging to the Commune. If the communal revision lists contain a hundred names, the communal land ought to be divided into a hundred shares, and each "revision soul" should enjoy his share in return for the taxes which he pays.

(c). Nevertheless, the taxes are personal, and are calculated according to the number of male "souls," and the Government does not take the trouble to enquire how the communal land is distributed. The Commune has to pay into the imperial treasury a fixed yearly sum, according to the number of its "revision souls," and distributes the land among its members as it thinks best. Page 183.

(d). How, then, does the Commune distribute the land? To this question it is impossible to give a definite general reply, because each Commune acts as it pleases. Some act strictly according to the theory. These divide their land at the time of the revision into a number of portions or shares corresponding to the number of revision souls which it contains. This is, from the administrative point of view, by far the simplest system. The census list determines how much land each ~~farmer~~ will enjoy, and the existing tenures are disturbed only by the revisions which take place at irregular intervals, on an average about ~~five~~ years each for the ten revisions since 1719, a term which is regarded as a tolerably long lease. Page 183.

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(e). This system has serious defects; for example, let us suppose two families, each containing at the time of the revision five male members. According to the census list, these two families are equal, and ought to receive equal shares of the land; but, in reality, it may happen that the one contains a father in the prime of life, and four able-bodied sons, whilst the other contains a widow and four little boys. The wants and working power of these two families are, of course, very different; and if the above system of distribution be applied, the man with four sons and a goodly supply of grandchildren will probably find that he has too little land, whilst the widow, with her five little boys, will find it difficult to cultivate the five shares allotted to her, and utterly impossible to pay the corresponding amount of taxation; for in all cases it must be remembered the communal burdens are distributed in the same proportion as the land.

(f). Hence, the division according to the theory is impracticable in Communes where the soil is so poor and the tax so heavy that the possession of land is often not a privilege, but a burden.

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(g). In the southern provinces, where the soil is fertile, and the taxes do not exceed the normal rent of land, the process of division and allotment is comparatively simple. Here, each peasant desires to get as much land as possible, and consequently each household demands all the land to which it is entitled; that is to say, a number of shares equal to the number of its members inscribed in the last revision list. The Assembly has, therefore, no difficult questions to decide. The communal revision list determines the number of shares into which the land must be divided, and the number of shares to be allotted to each family. The only difficulty likely to arise is as to which particular shares a particular family shall receive; and this difficulty is commonly obviated by the custom of casting lots.

(h). Very different is the process of division and allotment in many Communes of the northern provinces. Here the soil is often very unfertile, and the taxes exceed the normal rent; and consequently it may happen that the peasants strive to have as little land as possible, while the Communes are forced to adopt the expedient of allotting the land, not according to the number of revision souls, but according to the working-power of the families. Thus, in the instance supposed in (e), the widow would receive perhaps two shares, and the large household containing five workers would receive perhaps seven or eight. Since the breaking up of the large families, such inequality as I have supposed is of course rare; but inequality of a less extreme kind does still occur, and justifies a departure from the system of allotment according to the revision lists.

(6). (a). In the preceding pages I have repeatedly spoken about shares of the communal land. To prevent misconception, I must explain carefully what this expression means. A share does not mean simply a plot or parcel of land; on the contrary, it always contains at least four, and may contain a large number of distinct plots. * * Communal land in Russia is of three kinds—the land on which the village is built, the arable land, and the meadow or hay-field. On the first of these each family possesses a house and garden, which are the hereditary property of the family, and are never affected by the periodical redistributions. The other two kinds are both subject to redistribution, but on somewhat different principles.

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ORIGIN AND
PROGRESS.Chapter XXIX,
page 234.Kumherahs, or
servile labourers
under Indian
village system.

Pykasht ryots.

Khoodkasht
ots.Village com-
munities.

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different. A considerable number of these, perhaps as many as 10 per cent., were, properly speaking, not serfs at all, but rather domestic slaves, who fulfilled the functions of coachmen, grooms, gardeners, game-keepers, cooks, lackeys, and the like. Their wives and daughters acted as nurses, domestic servants, ladies'-maids, and seamstresses. If the master organised a private theatre or orchestra, the actors or musicians were drawn from this class. These serfs lived in the mansion or the immediate vicinity, possessed no land, except, perhaps, a little plot for a kitchen garden, and were fed and clothed by the master. Their number was generally out of all proportion to the amount of work they had to perform, and consequently they were always imbued with an hereditary spirit of indolence, and performed lazily and carelessly what they had to do. On the other hand, they were often sincerely attached to the family they served, and occasionally proved by acts their fidelity and attachment.

(8). (a). In the earliest period of Russian history the rural population was composed of three distinct classes. At the bottom of the scale stood the slaves, who were very numerous. Their numbers were continually augmented by prisoners of war, by freemen who voluntarily sold themselves as slaves, by insolvent debtors, and by certain categories of criminals.

Immediately above the slaves were the free agricultural labourers, who had no permanent domicile, but wandered about the country, and settled temporarily where they happened to find work and satisfactory remuneration.

In the third place, distinct from these two classes, and in some respects higher in the social scale, were the peasants, properly so called. These peasants proper, who may be roughly described as small farmers or cottiers, were distinguished from the free agricultural labourers in two respects; they were possessors of land in property or usufruct, and they were members of a rural Commune.

(b). The Communes were free primitive corporations, which elected their office-bearers from among the heads of families, and sent delegates to act as judges or assessors in the Prince's Court. Some of the Communes possessed land of their own, whilst others were settled on the estates of the landed proprietors, or on the extensive domains of the monasteries. In the latter case, the peasant paid a fixed yearly rent in money, in produce, or in labour, according to the terms of his contract with the proprietor or the monastery; but he did not thereby sacrifice in any way his personal liberty. As soon as he had fulfilled the engagements stipulated in the contract, and settled accounts with the owner of the land, he was free to change his domicile as he pleased.

(9). If we turn now from these early times to the eighteenth century, we find that the position of the rural population has entirely changed in the interval. The distinction between slaves, agricultural labourers, and peasants, has completely disappeared. All three categories have melted together into a common class called serfs, who are regarded as the property of the landed proprietors or of the State. "The proprietors sell their peasants and domestic servants not even in families, but one by one, like cattle, as is done nowhere else in the whole world, from which practice there is not a little wailing." And yet the Government,

whilst professing to regret the existence of the practice, takes no energetic measures to prevent it. On the contrary, it deprives the serfs of all legal protection, and expressly commands that if any serf shall dare to present a petition against his master, he shall be punished with the knot, and transported for life to the mines of Nertchinsk. How did this important change take place, and how is it to be explained?

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(10). In ancient times, the rural population was completely free, and every peasant might change his domicile on St. George's day, that is to say, at the end of the agricultural year. But there appeared at a very early period, long before the reign of Boris Godunof, a decided tendency in the princes, in the proprietors, and in the Communes, to prevent emigration. This tendency will be easily understood if we remember that land without labourers is useless, and that in Russia at that time the population was small in comparison with the amount of reclaimed and easily reclaimable land. The prince desired to have as many inhabitants as possible in his principality, because the amount of his regular revenues depended on the number of the population. The landed proprietor desired to have as many peasants as possible on his estate, to till for him the land which he reserved for his own use, and to pay him for the remainder a yearly rent in money, produce, or labour. The free Communes desired to have a number of members sufficient to keep the whole of the communal land under cultivation, because each Commune had to pay yearly to the prince a fixed sum in money or agricultural produce, and the greater the number of able-bodied members, the less each individual had to pay. To use the language of political economy, the princes, the landed proprietors, and the free Communes, all appeared as buyers in the labour market; and as the demand was far in excess of the supply, there was naturally a brisk competition.* * In old Russia regularly organized emigration for procuring labourers was of course impossible, and consequently illegal or violent measures were not the exception, but the rule. The object of the frequent military expeditions was the acquisition of prisoners of war, who were commonly transformed into slaves by their captors.* * A similar method was sometimes employed for the acquisition of free peasants; the more powerful proprietors organized kidnapping expeditions, and carried off by force the peasants settled on the land of their weaker neighbours.

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(11). Under these circumstances, it was only natural that those who possessed this valuable commodity should do all in their power to keep it. Many, if not all, of the free Communes adopted the simple measure of refusing to allow a member to depart until he had found some one to take his place. The proprietors never, so far as we know, laid down formally such a principle, but in practice they did all in their power to retain the peasants actually settled on their estates. For this purpose some simply employed force, whilst others acted under cover of legal formalities. The peasant who accepted land from a proprietor rarely brought with him the necessary implements, cattle, and capital, to begin at once his occupations, and to feed himself and his family till the ensuing harvest. He was obliged, therefore, to borrow from his landlord, and the debt thus contracted was easily converted into a means of preventing his departure, if he wished to change his domicile

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The proprietors were the capitalists of the time. Frequent bad harvests, plagues, fires, military raids, and similar misfortune often reduced even prosperous peasants to beggary. The *mir* was probably then, as now, only too ready to accept a loan, without taking the necessary precautions for repaying it. The laws relating to debt were terribly severe, and there was no powerful judicial organization to protect the weak. If we remember all this, we shall not be surprised to learn that a considerable part of the peasantry were practically serfs before serfage was recognized by law.

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(12). (a). So long as the country was broken up into independent principalities, separated from each other by imaginary boundaries, and each land-owner was almost an independent prince in his estate, the peasants easily found a remedy for these abuses in flight. They fled to a neighbouring proprietor, who could protect them from their former landlord and his claims; or they took refuge in a neighbouring principality, where they were, of course, still safer. All this was changed when the independent principalities were transformed into the Tsardom of Muscovy. The Tsars had new reasons for opposing the migration of the peasants, and new means for preventing it. The old princes had simply given grants of land to those who served them, and left the grantee to do with his land what seemed good to him; the Tsar, on the contrary, gave to those who served them merely the usufruct of a certain quantity of land, and carefully proportioned the quantity to the rank and obligations of the receiver. In this change there was plainly a new reason for fixing the peasants to the soil. The real value of a grant depended, not so much on the amount of land, as on the number of peasants settled on it; and hence any migration of the population was tantamount to a removal of the ancient landmarks; that is to say, a disturbance of the arrangements made by the Tsar. Suppose, for instance, that the Tsar granted to a Boyar or some lesser dignitary an estate on which were settled ten peasant families, and that afterwards five of these emigrated to neighbouring proprietors. In this case the recipient might justly complain that he lost half of his estate, though the amount of land was in no way diminished, and that he was consequently unable to fulfil his obligations. Such complaints would be rarely, if ever, made by the great dignitaries, for they had the means of attracting peasants to their estates; but the small proprietors had good reason to complain, and the Tsar was bound to remove their grievances. The attaching of the peasants to the soil was in fact the natural consequence of feudal tenures—an integral part of the Muscovite political system. The Tsar compelled the nobles to serve him, and was unable to pay them in money. He was obliged, therefore, to procure for them some other means of livelihood. Evidently the simplest method of solving the difficulty was to give them land, with a certain number of labourers; in other words, to introduce serfage.

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(b). Towards the free Communes the Tsars had to act in the same way, for similar reasons. The Communes, like the nobles, had obligations to the sovereign, and could not fulfil them if the peasants were allowed to migrate from one locality to another. They were, in a certain sense, the property of the Tsar, and it was only natural that the Tsar should do for himself what he had done for his nobles.

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(c). With these new reasons for fixing the peasants to the soil came, as has been said, new means of preventing migration. Formerly it was an easy matter to flee to a neighbouring principality, but now all the principalities were combined under one ruler, and the foundations of a centralized administration were laid. Severe fugitive laws were issued against those who attempted to change their domicile, and against the proprietors who should harbour the run-aways. Unless the peasant chose to face the difficulties of "squatting" in the inhospitable northern forests, or resolved to brave the dangers of the steppe, he could nowhere escape the heavy hand of Moscow.

(d). The indirect consequences of thus attaching the peasants to the soil did not at once become apparent. The serf¹ retained all the civil rights he had hitherto enjoyed, except that of changing his domicile. He could still appear before the courts of law as a free man, freely engage in trade and industry, enter into all manner of contracts, and rent land for cultivation. Even the restriction on the liberty of his movements was not so burdensome as it may at first sight appear; for change of domicile had never been very frequent among the peasantry, and the force of custom prevented the proprietors² for a time from making any important alterations in the existing contracts.

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(e). As time wore on, however, the change in the legal relation between the two classes became apparent in real life. In attaching the peasantry to the soil, the Government had been so thoroughly engrossed³ with the direct financial aim, that it entirely overlooked,³ or wilfully shut its eyes³ to the ulterior consequences which must necessarily flow from the policy it adopted. It was evident that as soon as the relation between proprietor and peasant was removed from the region of voluntary contract by being rendered indissoluble, the weaker of the two parties legally tied together⁴ must fall completely under the power of the stronger, unless energetically protected by the law and the administration. And yet the Government paid no attention to this inevitable consequence. So far from endeavouring to protect the peasantry from the oppression of the proprietors, it did not even determine by law the mutual obligations which ought to exist between the two classes. Taking advantage of this omission, the proprietors soon began to impose whatever obligations they thought fit; and as they had no legal means of enforcing fulfilment, they gradually introduced a patriarchal jurisdiction, similar to that which they exercised over their slaves, with fines and corporal punishment as means of coercion. From this they ere long proceeded a step further, and began to sell their peasants without the land on which they were settled. At first this was merely a flagrant abuse, unsanctioned by law, for the peasant had never been declared the private property of the landed proprietor; but the Government tacitly sanctioned the practice, and even exacted dues on such sales, as on the sale of slaves. Finally, the right to sell peasants without land was formally recognized by various imperial *ukases*.

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Government
during and since
the permanent
settlement.Zemindars under
the permanent
settlement.Huftum and
punjum.

¹ Ryots at the time of the permanent settlement.

² Zemindars for a very few years after the permanent settlement.

³ Lord Cornwallis at the permanent settlement.

⁴ Zemindar and ryot since the permanent settlement.

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Village system in
Lower Bengal.
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(13). The old communal organization still existed, and had never been legally deprived of its authority, but it was now powerless to protect the members. The proprietor could easily overcome any active resistance by selling or converting into domestic servants the peasants who dared to oppose his will.

(14). The peasantry had thus sunk to the condition of serfs, practically deprived of legal protection, and subject to the arbitrary will of the proprietors; but they were still in some respects legally and actually distinguished from the slaves on the one hand and the "free wandering people" on the other. These distinctions were obliterated by Peter the Great and his immediate successors. Peter was always on the look-out for some new object of taxation. When looking about for this purpose, his eye naturally fell on the slaves, the domestic servants, and the free agricultural labourers. None of these classes paid taxes—a fact which stood in flagrant contradiction with his fundamental principle of polity, that every subject should in some way serve the State. He caused, therefore, a national census to be taken, in which all the various classes of the rural population—slaves, domestic servants, agricultural labourers, peasants—should be inscribed in one category; and he imposed equally on all the members of this category a poll-tax, in lieu of the former land-tax, which had lain exclusively on the peasants. To facilitate the collection of this tax, the proprietors were made responsible for their serfs; and the "free wandering people," who did not wish to enter the army, were ordered, under pain of being sent to the galleys, to inscribe themselves as members of a Commune, or as serfs to some proprietor.

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(15). These measures had a considerable influence, if not on the actual position of the peasantry, at least on the legal conceptions regarding them. By making the proprietor pay the poll-tax for his serfs, as if they were slaves or cattle, the law seemed to sanction the idea that they were part of his goods and chattels. Besides this, it introduced the entirely new principle, that any member of the rural population not legally attached to the land or to a proprietor, should be regarded as a vagrant, and treated accordingly. Thus the principle, that every subject should in some way serve the State, had found its complete realization. There was no longer any room in Russia for free men.

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(16). * * * The nobles could reduce to serfage the peasants settled on their estates, but they could not take possession of the free Communes, because such an appropriation would have infringed the rights and diminished the revenues of the Tsar. * * * At the date of the emancipation (1861), by far the greater part of the territory belonged to the State, and one-half of the rural population were so-called State peasants.

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(17). Regarding the condition of these State peasants, or peasants of the demesnes, as they are sometimes called, I may say briefly that they were, in a certain sense, serfs, being attached to the soil like the others; but their condition was, as a rule, somewhat better than the serfs, in the narrower acceptance of the term. They had to suffer much from the tyranny and extortion of the special administration under which they lived, but they had more land and more liberty than was commonly enjoyed on the estates of resident proprietors, and their position was much less precarious.

18. The dues paid by the serfs were of three kinds, labour, money, and farm produce, chiefly eggs, chickens, lambs, mushrooms, wild berries, and linen cloth. This last was unimportant. Respecting the other two—

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(a). When a proprietor had abundance of fertile land, and wished to farm on his own account, he commonly demanded from his serfs as much labour as possible. * * According to the famous manifesto of Paul I, the peasant could not be compelled to work more than three days in the week; but this law was by no means universally observed, and those who did observe it had various methods of applying it.

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(b). When a land-owner had more serf labour at his disposal than he required for the cultivation of his fields, he put the superfluous serfs "*on obrók*;" that is to say, he allowed them to go and work where they pleased on condition of paying him a fixed yearly sum.

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(c). Sometimes the proprietor did not farm at all on his own account, in which case he put all the serfs "*on obrók*," and generally gave to the Commune in usufruct the whole of the arable land and pasturage. In this way the *mir* played the part of a tenant.

19. According to the most recent data of the population in European Russia, the exact numbers are—

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Peasants—

State	23,138,191	
On the lands of proprietors (formerly serfs)	23,022,390	
Of the appanage and other departments	...	...	3,326,084	
				49,486,665
Remainder of population	...	...		11,422,644
Entire population	...	...		<u>60,909,309</u>

20. (a). From an historical review of the question of serfage, the Emperor drew the conclusion that "the autocratic power created serfage, and the autocratic power ought to abolish it." On February 19th, 1861, the law was signed, and by that Act more than 20 millions of serfs (or 40 millions, including State peasants) were liberated. A manifesto containing the fundamental principles of the law were at once sent all over the country, and an order was given that it should be read in all the churches. The three fundamental principles laid down by the law were—

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(1). That the serfs should at once receive the civil rights of the free rural classes, and that the authority of the proprietor should be replaced by communal self-government.

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(2). That the rural Communes should, as far as possible, retain the land they actually held, and should in return pay to the proprietor certain yearly dues, in money or labour.

(3). That the Government should by means of credit assist the Communes to redeem these dues, or, in other words, to purchase the lands ceded to them in usufruct.

(b). With regard to the domestic serfs, it was enacted that they should continue to serve their masters during two years, and that there-

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after they should be completely free, but they should have no claim to a share of the land.

21. The work of concluding contracts for the redemption of the dues, or, in other words, for the purchase of the land ceded in perpetual usufruct, proceeded slowly, and is, in fact, still going on. The arrangement was as follows: The dues were capitalized at 6 per cent., and the Government paid at once to the proprietors four-fifths of the whole sum. The peasants were to pay to the proprietor the remaining fifth, either at once or in instalments, and to the Government 6 per cent. for forty-nine years on the sum advanced. The proprietors willingly adopted this arrangement, for it provided them with a sum of ready money, and freed them from the difficult task of collecting dues. But the peasants did not show much desire to undertake the operation. Some of them expected a second emancipation, and those who did not take this possibility into their calculations, were little disposed to make present sacrifices for distant prospective advantages which would not be realized for half a century. In most cases, the proprietor was obliged to remit, in whole or in part, the fifth which was to be paid by the peasants. Many Communes refused to undertake the operation on any conditions, and in consequence of this not a few proprietors demanded the so-called obligatory redemption, according to which they accepted the four-fifths from the Government as full payment, and the operation was thus effected without the peasants being consulted. The total number of *male* serfs emancipated was about nine millions and three-quarters; and of these, only about seven millions and a quarter had already, at the beginning of 1875, made redemption contracts. Of the contracts signed at that time, about 63 per cent. were "obligatory."

22. The serfs were thus not only liberated, but also made possessors of land, and put on the road to becoming communal proprietors, and the old communal institutions were preserved and developed.

23. One part of the recent legislation, elaborated with a view to preserve the Commune, has, in reality, dealt a serious blow at the fundamental principle of the institution. By the law of 1861, the Commune is enabled to redeem the dues, and become absolute proprietor of the land. This is effected by a series of yearly payments extending over nearly half a century, and each family contributes to these payments according to the amount of land which it possesses. Now the question is, will these peasants, who have been paying for a certain definite amount of land, willingly submit to a redistribution by which they will receive less than the amount for which they have paid? I think not. The redemption of the dues—or, in other words, the purchase of the land—has already considerably modified the peasants' conceptions of communal property; and it may be remarked that in those Communes which have undertaken the redemption operation, redistributions have become rare, or have entirely disappeared. This important fact seems to have been hitherto entirely overlooked.

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page 210.

24. (a). In the Northern Agricultural Zone, the soil was poor, and so much exhausted that it did not give a fair remuneration for the labour expended on it. So far, therefore, as the proprietors were concerned, agriculture was founded on the artificial basis of serf labour. Thus the proprietors, in being deprived of serf labour, were deprived of their most

valuable possession; but they were partly indemnified for this loss by the annual dues, which greatly exceeded the normal rent of the land ceded to the Communes. In the central part of this region, moreover, the proprietor no longer employed all his serfs for agriculture, but allowed a large part of them to gain a living by other occupations, on condition of their paying him a fixed yearly sum (*obirék*) as a substitute for the field labour which he did not require. For such proprietors, the emancipation of the serfs without compensation would, of course, have been ruinous. To prevent this, it was decided that all the peasants—even those who lived by non-agricultural occupations—should be obliged to accept land, and to pay for it dues exceeding the normal rent.

(b). Thus, we see in the Northern Agricultural Zone the proprietors received a certain compensation for the loss of serf labour in the annual dues imposed on the peasantry by the Emancipation law. It must be added, however, that this compensation was not nearly so great as it seemed. The proprietor found it always difficult, and often utterly impossible, to collect the dues; and he had reason to fear that the peasants, in accordance with the permission granted to them by the law, would, at the expiry of the first nine years, entirely liberate themselves from these dues by emigrating to the towns, or to more fertile parts of the country. The only way he had of escaping from these difficulties and dangers lay in demanding the so-called obligatory redemption of the land; and in adopting this expedient he had to make considerable sacrifices. In the first place, as he demanded the redemption of the land without obtaining the consent of the peasants, he had to accept four-fifths of the sum as full payment; and in the second place, a large part of the four-fifths was paid to him, not in money, but in Government bonds bearing interest at 5 per cent., which rapidly fell, on account of the enormous number of them which were simultaneously thrown on the market, to 80 per cent. of their nominal value. Thus, instead of receiving 150 roubles from each of his male peasants, he received only 130 roubles nominally, and considerably less in reality, unless he could wait for fifteen years, the term fixed for the replacing of the Government bonds by bank notes. And even of this diminished sum many proprietors actually received only a small portion, for the treasury paid to itself all claims which it had on the estates, and handed over merely the balance.

25. (a). In the northern section of the Southern Agricultural, or Black Earth Zone, the soil was naturally rich, and still retained a great part of its virgin fertility, so that it could easily supply much more grain than was necessary for the wants of the inhabitants. The agricultural population was sufficient for the cultivation of the land, and the amount of land ceded to the serfs for their own use was a fair remuneration for the labour which they supplied to the owner of the estate. * * In short, the economic conditions in this region were such, that serfage was little, if at all, more profitable than free labour; and therefore we may conclude that for the loss of serf labour the proprietors did not require any compensation. As to the dues, they did not, perhaps, quite represent the full value of the land ceded to the Commune; but the difference between the real and the assumed value was not great. If the proprietors had any just ground of complaint, it was that the inevitable rise in the

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price of land, which many of them clearly foresaw, was not taken into account.

(b). In the southern section of this zone the population was not nearly so dense, and the supply of labour was consequently not equal to the demand. Serfage had, therefore, a considerable value, and the land-owners were not at all indemnified for its abolition; for the peasants of this region received a large quantity of land, and certainly did not require to pay more for it than it was worth.

26. In this interesting account of the system of land tenure in Russia, and the abolition of serfdom, there are certain deficiencies that may be supplied from a paper by Herr Julius Faucher of Berlin, on the "Russian Agrarian Legislation of 1861," which is contained in the volume of essays published by the Cobden Club, on "Systems of Land Revenue in various countries."

I. In Bengal the zemindars were originally collectors of revenue, or chiefs of principalities, or administrators of districts to whom the Emperor had granted a portion of the fixed State dues from proprietors of land. For Russia M. Julius Faucher gives the following account:—

(a). The bondage of agricultural labour, taken off from the Russian people by the legislation of 1861, was of comparatively recent origin. It is true that already at the dawn of recorded Russian history, we meet with the existence of slaves of the Czar as well as of the nobles of his court, but these slaves were prisoners of war, and their offspring the personal property of their masters, and quite different from the peasantry, which formed the bulk of the Russian people. The noblemen who owned those slaves were themselves *no* landed proprietors in their own right, nor even vassals owing allegiance for the tenure of land, but servants of the crown, whom the crown had to feed. This, not as a rule, but often, was managed in the form of an allotment to them of crown land, to be tilled by their slaves, either for a number of years or for life; or, but rarely with revocable permission, to leave the fruit of it to their descendants. Such nobles as did *not* own slaves were sometimes paid by the Czar's abandoning to them the yield of the taxes due to the Czar by the peasantry of one or more villages. But such an arrangement did not legally impair in the slightest degree the liberty of these peasants. They remained the free children of the Czar, entitled legally to break off their household, and to separate from their village community whenever they liked, and to join another. The yield of the taxes of the place, not that of so many distinct persons, was given in lieu of salary. The Russian peasants of those times were nobody's servants but the Czar's, like everybody else in the empire. Nor for tracing the origin of the bondage now destroyed, is it necessary to refer to the more remote parts of Russian history.* * *

(b). On the expulsion of the Mongols into Asia, the bond of unity of the empire had to be drawn tighter. The rule of numerous princes, vassals of the grand prince, who now officially adopted the name of

Czar, or rather Zar, had to be done away with at all events. Ivan III commenced the struggle. Ivan IV, the Terrible, brought it to a successful issue. This struggle favoured the growth of a petty nobility, formed partly of the courtiers of the late princes, whom the Czars left in possession of the yield of the taxes of such villages as had been allotted to them by their former masters, without insisting upon regular service on their part, merely reserving the right to summon them when wanted. Such is still the relation of the whole Russian nobility to their Czar. It consisted, further, of the Czar's own servants, who were partly taken¹ from among the villagers themselves, likewise endowed with the yield of the taxes of one or more¹ villages, and lastly, the proprietors of such villages, mainly situated in the western parts of Russia, which had been formed of slaves, and had always been the property of their masters.

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II. It is seen from Mr. Wallace's account that the village communes are partly established on what were, till lately, the lands of nobles, and partly on lands held directly from the State. The following explanation of this circumstance brings out strikingly the provision in the Russian land system, for supporting, without a Poor Law, an increase of population, and the facility, in the immense wastes in the Russian Empire, of providing for that increase through the expansive colonising power of the village communities:—

(a). The division of the Russian people into Great Russians and Little Russians signifies far more than a mere split of the language into two dialects, which, by the way, differ but little from each other. Let us state at once the salient point. Little Russia, with Kiew for its centre, is the mother-country; and Great Russia, with Moscou for its centre, is the *colony*, the one great colony whose limits are not fixed. Little Russia is Slavonic, pure; the Great Russians are a mixed race, a majority being Slavonians, undoubtedly, and who, more by dint of higher culture than by the sword, were the conquerors, with a minority of the former inhabitants of the country, the Finnie tribes or Tchudes. And now the consequence of it on which we intend to lay stress! The colony, which afterwards became the dominant part of the empire (*colonisation never being completed*, that is to say, never yet having occupied the whole disposable soil), did not yet find time to undergo such changes in the form of the tenure and the tillage of land as have occurred in the other places, where originally the same form prevailed in that which the Great Russians continued to preserve while constantly applying it anew, as colonists, on virgin soil.

(b). It may be stated at once that this form was that of the joint husbandry of a whole village. The village, not the family, was the social unit. Supplanting the family for purposes of colonisation, the village, by necessity, partook to a certain extent of the character of a family. Movable property alone was individual; immovable—the land at least—was common. With the alien not belonging to the village, the

¹ Mocuddums, or heads of villages, and dependent talukdars.

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village only, not the individual, had to do. The village always had a mother-village, and the mother-village again had a mother-village, and so on. The name of mother-village in general, or of mother-village to another district village, is still attached to many Russian towns and villages; but even where the tradition of it is now lost, it may be taken for granted that such a relation once existed. * * I have been witness (in the government of Moscou in the summer of 1867) to the fact that a whole village, which had been destroyed by one of the numerous conflagrations of that year, and which had lost everything, whose inhabitants, besides, not feeling at ease where they were, resolved to return to the mother-village of their village, situated 250 miles off, and which they, or rather their ancestors, had left nearly fifty years ago;—they collected money for this purpose from the neighbouring country, and even the neighbouring villages, which, fully appreciating the resolution, contributed their share.

(c). The colonisation by whole villages giving birth to other villages, and sending them off and planting them often at a very great distance, was necessitated by the difficulties colonisation had to encounter in those tracts and in those times. * *

(d). As said before, the possibility of constantly throwing off the surplus of the increasing population of the village by founding a daughter-village on virgin soil, was calculated to take away every stimulus to change the system, which at the same time was so extremely fitted to the exigencies of that primitive colonisation. While all the other Slavonian nations, the Little Russians not excepted, followed to a certain extent the ways of Central and Western Europe (a process which partly was quickened by conquest, those farther west being almost invariably the conquerors of those farther east), the Great Russians alone kept the original form of settled life of the Slavonian race intact. Their place on the utmost north-eastern wing of the race, putting them at the same time out of reach of western conquest, with nothing but huntsmen, and nomads, and virgin soil all round them, made *expansion, not change*, their law of progress, just as it seems to have been the case with the Chinese whom they are now facing.

III. The abolition of serfdom was analogous to any measure by which the Government of India might undo the mischiefs that have arisen from the zemindary settlement by fixing permanently the demand on the cultivators of land, as was intended from the outset by the framers of the permanent settlement. The considerations which determined the eventual settlement with the emancipated serfs, and the broad features of that settlement, are shown in the following extracts:—

(a). This much was considered as a settled thing, when the Emperor Alexander II ascended the throne, by himself as well as by his people, that at all events *serfdom* was now to be entirely and forcibly eradicated from agrarian legislation in Russia. In this primary and unconditional postulate all the world agreed. But nobody, not even

the most strenuous advocate of unlimited rights of property in land, conferred by superannuation on the proprietor in legally acknowledged possession, could hide from himself that merely to sever the link between master and serf, and to make this measure at the same time sever the link between the serf and the *land*, would be, besides an historical injustice, a political blunder involving the most direful consequences. For what was to become of an enfranchised serf? An agricultural labourer? Would this be the use he would make of his freedom that he remained what he had been, with this difference that his master, now called his employer, could in his idea, far worse than to whip him, turn him out of doors with wife and child, at the slightest symptom of even a justifiable disobedience? A farmer? And if a farmer, a farmer of what? merely of the land necessary to provide the food and clothing for the family? But, being unable to pay any rent out of the produce of this land, he would have to do other work to enable him to pay the rent. What work? Village industry? Field labour on the proprietor's land? Would not he thus legally be the same labourer as above, only with notice to quit by the year, instead of by the week, for practically it would be by the year in both cases; and in both cases the security of his sustenance, which with serfdom was perfect, would be superseded by a constant apprehension of losing his sustenance, and render him as resistless as farmer against rack-rent, as he would be resistless as labourer against depression of wages and maltreatment. Practically, in both cases, his position would be exactly the same; for the rack-rent in the one case would be but another form of the depression of wages in the other. Everybody, economist as well as socialist, understood that the economical, or social law, as the reader likes, which regulates the relations between employer and labourer, and between proprietor and farmer, a law which the economist trusts and the socialist curses, at all events was not applicable, where the threat of the loss of a homestead, and of a sustenance hitherto enjoyed by the future labourer or farmer under very different arrangements, was thrown into the balance, to the employer's or proprietor's advantage, and to the labourer's or farmer's disadvantage. It could not but have rapidly brought about a probably fearful state of the country. It would have soon filled the country with swarms of peasantry, wandering to and fro, now begging, now endangering the safety of the roads, and finally of the country-seats. The pretext of Boris Godunou would have been turned into a reality.

(b). The resolve of doing away altogether with serfdom involved, therefore, in everybody's eyes in Russia, at once a *second* resolve, namely, that of settling the *land question* between the late *master* and his late *serfs* in such a way as to prevent the bulk of the peasantry from becoming suddenly and simultaneously unsettled and homeless, and thus to make the new relations between employer and labourer, or between proprietor and farmer, take their issue from a position duly balanced between them.

(c). But this being agreed upon by almost unanimous consent, a *third* still more precarious problem at once emerged, so to speak, from the deep sea of agrarian history in Russia, and forced itself on the anxious attention of the native statesmen and writers on public affairs. If the land was to be divided between the master and his serfs. was the

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single former serf to be invested with freehold property in accordance with what had taken place under similar circumstances farther west in Europe, or was regard to be had to the old national custom of common village property and joint village husbandry? The "Mir," as the language has it, is an expression not to be translated into a language of Western Europe. * *

(d). The whole plan, under the contending influence of opposed ideas as to the future agrarian organization to be desired, assumed this general shape—the retention of the system of common husbandry by the enfranchised serfs of a village, as the cradle of an estate of peasant proprietors, created by their own free efforts, by the side of large noble proprietors of land, so that both classes of proprietors will have to show of what stuff they are made. Events will prove whether the peasant proprietary will increase, owing to further purchases of land, or property will be absorbed in the hands of the nobles, who will then have to turn it into account by free labour, instead of by the labour of serfs, or by letting their land probably in farms of larger size to the most intelligent and enterprising of the class. The "Mir" or copyhold, which evidently will retain the weakest part of the peasantry, would serve all the while as a safeguard against the spread of pauperism of the West European character, as a kind of agricultural work-house under the management of the inmates themselves, but not, as will be seen, without control—a work-house endowed with a not inconsiderable amount of soil for which rent is to be paid.

IV. The settlements with the Russian nobles, in discharge of all further claims of theirs on the liberated serfs, were made on principles which deprived them of the yet "unearned increment," and which commuted their rents for less than the actual amount. Thus—

(a). The proprietor of a village was bound to hand over to the villagers, in hereditary copyhold, against payment of rent, an amount of land, the exact size of which was to depend on local circumstances, and on friendly agreement between the proprietor and the peasants; but so that the land transferred to the village should amount to not less than $4\frac{1}{2}$ djessatines (about twelve acres) per male head of the population. * * The real extent of the land transferred will have been, in most cases, that of the "Nadel," that is to say, of the land which the peasants had under cultivation for sustaining themselves and their families while serfs.

(b). The transferred land was to include not less proportions of manured, pasture and garden land than might be agreed to by the peasants. In short, precautions were taken to prevent the proprietor from mutilating the self-sustaining completeness of peasant husbandry from the beginning. Those who framed the details wanted a stable "Mir," or, if the peasants should prefer to dissolve it, a stable peasantry founded on individual property.

(c). For the space of *nine* years after the new regulations had become the law of the land, it was rendered *obligatory* on the peasantry to

keep the land in copyhold against payment of rent. Only this much was allowed, that by free agreement between the proprietor and the peasant, on the proposition of the latter a reduction of the peasant's share to one-half of the maximum, where this at first had been exceeded, could be effected. But this was then to be the definitive size of the peasant's share. It was further allowed, that if within the nine years the peasants in common should purchase not less than one-third of the *maximum* of copyhold land, or if the proprietors should make a present to the peasants of so much land as formed one-fourth of the maximum, the peasants might renounce the remainder in copyhold, even before the lapse of the obligatory nine years.

(d). The copyhold fee or rent was fixed by taking labour as the form of rent, and the maximum of the peasants' land, on the male head of the village population, as the basis of the calculation [here follows a sketch of details of calculation.] It will be seen that care has been taken to keep as close as possible in framing the law to the custom which prevailed in the times of serfdom, of the proprietor leaving three days of the week to his serfs, and claiming the other three for himself. He has still his three days per week, only he has far less labourers to dispose of. For, instead of having to claim about one hundred and thirty days, he has to claim but forty, and, respectively, thirty. This, especially, is what has reduced the value of Russian estates after the abolition of serfdom.

(e). For the rent in money, too, where this form is adopted, does not make up for the working days of the serfs lost by the proprietor, being merely the equivalent of the number of working days now forming the rent of a share. The transition from labour rent to money-rent was made optional with the peasants, with the whole community, or with every single family, in the sense of the repartition for tilling purposes of the land by the members of the community among themselves, *tjaglo*, only two years after the law had become valid, and they not being in arrear with working days. Four-fifths of the peasants having effected the transition from labour-rent to money-rent, it was made optional with the proprietor of the estate to compel the remaining fifth. * * The legislator has estimated the rent of an acre in Russia at 2s. 4d., and the wages of agricultural labour at 5d. a day. Both estimates are far from coinciding with the prices actually obtainable in the open market. Wages almost everywhere are much higher, so that it is advantageous to the peasantry to pay the money-rent or "obrok," instead of working for the proprietor.

27. Mr. Mitchell in his report of 1870 to the Foreign Office, on the system of land tenure in Russia, gave the following sketch of the general features of the measure of emancipation :—

I. The leading principles on which the Emancipation Act is now based are as follows :—

(a). The cession of the perpetual usufruct (tenancy) of the serf's homestead, and of certain allotments of land, on terms settled by mutual agreement, or, failing which, on conditions fixed by law.

(b). The compulsory sale by the lord, at the desire of the serf, of the serf's homestead, either on terms of mutual agreement or on conditions fixed by law, the right of refusing to sell the homestead without the statute land allotment being reserved to the lord.

(c). State assistance in the redemption (purchase) by the serf of his homestead and territorial allotment, provided the lord shall agree to sell the latter.

II. As regards, therefore, the interest of the serf, the advantages conferred upon him by the Emancipation Act may be summarized as follows:—

(a). The right of a freeman.

(b). The right of enjoying, on terms fixed by law, the perpetual usufruct of his homestead, and of certain maximum and minimum territorial allotments, based on the quantity of land which he cultivated prior to the emancipation.

(c). The right of converting his liability in service (socage) into a money rent on terms fixed by law.

(d). The right of demanding the sale of his homestead from the lord, and the right (subject to the consent of the lord) of purchasing his territorial allotment also.

(e). The means afforded by the State of fully and finally terminating, by the redemption of homesteads and territorial allotments, his relations of dependence towards the lord of the soil; and,

(f). Communal and cantonal self-government.

III. The interest of the landed proprietor is protected by the following provisions of the Emancipation Act:—

(a). Whether the lord grant the perpetual usufruct (tenancy) or the freehold of the peasant homesteads and land allotments, a money payment, more or less equivalent, based on the rents which he previously enjoyed, is secured to him, and he is therefore called upon to cede without compensation only his political rights over the serf, and his right to the gratuitous labour of the domestic serf.

(b). He can insist on the serf purchasing his territorial allotment as well as his homestead.

(c). He can refuse to sell the territorial allotment without the homestead.

(d). He can avoid the cession of the perpetual usufruct of the territorial allotments fixed by law, by bestowing, as a free gift on the peasantry who shall consent to receive the same, a quarter of the maximum allotment of which they are entitled to enjoy the usufruct, with the homestead on it.

(e). He is no longer responsible for the care of the poor or for the payment of the Imperial taxes by the peasantry.

(f). He is no longer bound to defend actions at law to which the peasantry on his soil may be engaged, nor to pay the fines, &c., for which, when inflicted on the serf, he was previously liable.

(g). He obtains compensation for the loss of serf labour and for the cession of lands in Government stock, in the proportion of 80 per cent. of the valuation of the latter.

(h). He obtains the means of clearing off any mortgage with which his land may be burdened, and an amount of ready money that

will, under favourable circumstances, enable him to conduct his farming operations by means of hired labour and machinery.

IV. The interest of the State consisted in promoting the welfare of the great bulk of its population by stimulating the development of agriculture. But apart, to some extent, from this interest, the Russian Government was forced by financial exigencies to protect the interest of the Exchequer, by the preservation of the system of poll taxation. This fiscal interest was identical with that of the State institution charged with the "Redemption operation," viz., with the advance of money to the peasantry for the purpose of buying their homesteads and territorial allotments.

V. The two latter interests were protected by the introduction of a system of collective responsibility under which the peasantry were made to guarantee mutually the exact payment of their quit-rents, taxes, and "redemption dues." That collective responsibility was laid on the village communes which as corporate bodies became the purchasers of the land ceded to the peasantry, who thus became in a measure only tenants under communes.

VI. In order, on the other hand, to prevent dissolution of the commune,—the administrative and financial unit,—the Emancipation Act was calculated, by a variety of subtle provisions, to prevent the peasantry from leaving the soil to which they were, therefore, attached almost as firmly as in 1592.

28. Among the results to be expected from the abolition of serfdom, Mr. Mitchell notices the following:—

I. Another important result may be expected from the disintegration of the old serf units, namely, that it will have the effect of checking the migratory, nomadic tendency of the Russian people. As a member of a communal family, the serf could leave his wife and children at home while he ranged over the country to tempt the smiles of fortune, and frequently only to escape from the burdens and melancholy slavery of the family life. He knew that, whatever happened to him, his wife and children would get their share out of the common bowl of buckwheat or cabbage soup. The chains of his serfdom were heavier at home than abroad, and he was anxious to lighten them whenever the chance occurred. Now, however, since the peasant cannot leave his wife and children with equal facility and security, as regards their material provision, he becomes attached to his homestead by natural ties that will render unnecessary the application of those unnatural laws by which a nominally free peasantry continue to be firmly attached to the soil.

II. Before a tenant can leave his commune and relinquish the allotment which he holds, he must obtain the consent of the communal administration, which will demand—

- (1). The cession of his right to a portion of the communal allotment.
- (2). The cession, to the proprietor, of the allotment which he cultivated, if the commune refuses to accept it.
- (3). The performance of his liabilities, if he have any, in respect of the annual recruitment.
- (4). That he shall make good any arrears of Imperial, local, and rural taxes due by his family, and pay his taxes up to the 1st of January of the following year.

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(5). That he shall satisfy all private claims and perform all contracts that are beyond dispute, and that shall have been exhibited to the cantonal administration.

(6). That he shall not be at the time under judgment or pursuit.

(7). That he shall make provision for members of his family who, while remaining in the commune, may be unable, from youth or old age, to do any work.

(8). That he shall make good any arrears of rent due to the lord on the allotment which he held; and

(9). That he shall present the resolution of another commune, admitting him as a member of it, or a certificate to prove that he has purchased the freehold of a plot of land of an area of at least two maximum or statute allotments, situated at a distance of not more than fifteen versts (ten miles) from the commune to which he desires to attach himself.

III. It is true that he may, without leaving the commune, relinquish the allotment which he held in it, but it is only on conditions of his purchasing the freehold of an estate of an area of at least two maximum or statute allotments within ten miles of his commune.

But he cannot give up his land allotment without relinquishing his homestead, unless he shall have purchased the latter with the consent of the lord, a consent which it is not the interest of the lord to give.

IV. There are two very difficult conditions on which a tenant can leave his commune, even after the expiration of the term of his compulsory tenancy, without obtaining the consent either of the lord of the commune, namely, by paying into the communal fund a sum that will represent $16\frac{2}{3}$ years' purchase of his annual quit-rent, capitalized at 6 per cent., or by the lord relinquishing his right to the perpetual quit-rent due by the tenant; or, again, by permitting the commune, and the latter consenting, to assume the responsibilities of the outgoing member.

V. The necessity of gaining admission into some other commune, or into some taxable class, is of itself sufficient to render impossible the migration of the remaining tenants to any great extent. The quantity of land held by a commune being limited once for all, its interest will not lie in the direction of admitting new members. If the commune is prosperous, and owes no arrears, why should it bestow a portion of its prosperity on a new comer? And if it be in a condition of poverty and indebtedness, the seceder from another poor village community will naturally not seek admission into it. And then, as regards the burgher class into which, under the Emancipation Act, the seceding peasant, after fulfilling all the other heavy conditions imposed upon him, is allowed to seek admission, it is doubtful whether the Government will allow this provision of the Act to remain unexplained by a circular, since the burgher class is no longer liable to a capitation tax.

29. We find from this Appendix that Russia has incurred considerable expense for putting an end to a serfdom that had been brought about by mistakes of past Governments which bear a curiously close resemblance to the mistakes committed by Lord Cornwallis in his zemindary settlement of Bengal.

APPENDIX XXVIII.

HISTORY OF ENGLISH LAND TENURES.

1. I. (a). The proper division of freemen was into EORLS and CEORLS, a division corresponding to the phrase "gentle and simple" of later times. The eorl was a gentleman, the ceorl a yeoman, but both freemen. The eorl did not become a title of office till the eleventh century, when it was used as synonymous to alderman for the governor of a county or province. After the word became used in this restricted sense, the class of persons which it originally designated was called THANES, and accordingly we have the two-fold division of freemen into THANES and CEORLS.

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(b). Among all the northern nations, as is well known, the weregild, or compensation for murder, was the standard measure of the gradations of society. In the Anglo-Saxon laws we find two ranks of free-holders, the first called King's Thanes, whose lives were valued at 1,200 shillings; the second, of inferior degree, whose composition was half that sum. That of a ceorl was 200 shillings. If this proportion to the value of a thane points out the subordination of rank, it certainly does not exhibit the lower freemen in a state of complete abasement. The ceorl was not bound, at least universally, to the land which he cultivated. He was occasionally called upon to bear arms for the public safety; he was protected against personal injuries or trespasses on his land. He was capable of property, and of the privileges which it conferred. If he came to possess five hydes of land (or about 600 acres), with a church and mansion of his own, he was entitled to the name and rights of a thane. And if by owning five hydes of land he became a thane, it is plain that he might possess a less quantity without reaching that rank. There were, therefore, ceorls with lands of their own, and ceorls without lands of their own; ceorls who might commend themselves to what lord they pleased, and ceorls who could not quit the land on which they lived, owing various services to the lord of the manor, but always freemen, and capable of becoming gentlemen.

(c). Nobody can doubt that the *villani* and *bordarii* of Domesday Book, who are always distinguished from the serfs of the demesne, were the ceorls of Anglo-Saxon law. And I presume that the *soemen*, who so frequently occur in that record, though far more in some counties than in others, were ceorls more fortunate than the rest, who by purchase had acquired freeholds, or by prescription and the indulgence of their lords had obtained such a property in the outlands allotted to them, that they could not be removed, and in many instances might dispose of them at

pleasure. They are the root of a noble plant, the free socage tenants, or English yeomanry, whose independence has stamped with peculiar features both our constitution and our national character.

(d). Beneath the ceorls in political estimation were the conquered natives of Britain. In a war so long and so obstinately maintained as that of the Britons against the invaders, it is natural to conclude that in a great part of the country the original inhabitants were almost extirpated, and that the remainder were reduced into servitude. This, till lately, has been the concurrent opinion of our antiquaries; and with some qualification I do not see why it should not still be received. * * If we look through the subsisting Anglo-Saxon records, there is not very frequent mention of British subjects. But some undoubtedly there were in a state of freedom and possessed of landed estate. A Welshman (that is, a Briton) who held five hydes was raised, like a ceorl, to the dignity of thane. In the composition, however, for their lives, and consequently in their rank in society, they were inferior to the meanest Saxon freemen. The slaves, who were frequently the objects of legislation, rather for the purpose of ascertaining their punishments than of securing their rights, may be presumed, at least in early times, to have been part of the conquered Britons. For though his own crimes, or the tyranny of others, might possibly reduce a Saxon ceorl to this condition, it is inconceivable that the lowest of those who won England with their swords should in the establishment of the new kingdoms have been left destitute of personal liberty.

II.—FRANK-PLEDGE.

(a). The law of frank-pledge proceeded upon the maxim that the best guarantee of every man's obedience to the government was to be sought in the confidence of his neighbours. * * The peculiar system of frank-pledge seems to have passed through the following very gradual stages: At first an accused person was obliged to find bail for standing his trial. At a subsequent period, his relations were called upon to become sureties for payment of the composition and other fines to which he was liable. They were even subject to be imprisoned until payment was made, and this imprisonment was commutable for a certain sum of money. The next stage was to make persons already convicted, or of suspicious repute, give sureties for their future behaviour. It is not till the reign of Edgar that we find the first general law which places every man in the condition of the guilty or suspected, and compels him to find a surety who shall be responsible for his appearance when judicially summoned. This is perpetually repeated and enforced in later statutes, during his reign and that of Ethelred. Finally, the laws of Canute declare the necessity of belonging to some hundred and tything, as well as of providing sureties; and it may perhaps be inferred that the custom of rendering every member of a tything answerable for the appearance of all the rest, as it existed after the conquest, is as old as the reign of this Danish monarch.

(b). It is an error to suppose, as some have stated, that "the members of every tything were responsible for the conduct of one another; and that the society or their leader might be prosecuted and compelled to make reparation for an injury committed by any individual." In fact, the

members of a tything were no more than perpetual bail for each other. "The greatest security of the public order (say the laws ascribed to the Confessor) is that every man must bind himself to one of those societies which the English in general call freeborgs, and the people of Yorkshire "ten men's tale." This consisted in the responsibility of ten men, each for the other, throughout every village in the kingdom; so that, if one of the ten committed any fault, the nine should produce him in justice, where he should make reparation by his own property, or by personal punishment. If he fled from justice, a mode was provided, according to which the tything might clear themselves from participation in his crime or escape; in default of such exculpation, and the malefactor's estate proving deficient, they were compelled to make good the penalty. And it is equally manifest, from every other passage in which mention is made of this ancient institution, that the obligation of the tything was merely that of permanent bail, responsible only indirectly for the good behaviour of their members. Every freeman above the age of twelve years was required to be enrolled in some tything.

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If it were possible for the Government to help Bengal ryots to buy out the rights of zemindars, the help might be given on the condition of each village assuming a joint and several responsibility analogous to that of frank-pledge.

2. I.—FEUDAL TENURES BEFORE THE CONQUEST.

(a). The distribution of landed property in England by the Anglo-Saxons is clearly explained by Mr. Allen, in his inquiry into the 'Rise and growth of the Royal Prerogative': "Part of the lands they acquired was converted into estates of inheritance for individuals; part remained the property of the public and was left to the disposal of the State. The former was called *Bocland*; the latter, *Folcland*."

"*Folcland*, as the word imports, was the land of the *folk* or people. It was the property of the community; it might be occupied in common or possessed in severalty. But, while it continued to be folcland, it could not be alienated in perpetuity; and therefore, on the expiration of the term for which it had been granted, it reverted to the community; and was again distributed by the same authority."

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"*Bocland* was held by *book*, or charter. It was land that had been severed by an act of government from the folcland, and converted into an estate of perpetual inheritance. It might belong to the church, to the king, or to a subject. It might be alienable and devisable at the will of the proprietor. It might be limited in its descent without any power of alienation in the possessor. It was often granted for a single life, or for more lives than one, with remainder in perpetuity to the church. It was forfeited for various delinquencies to the State."

"*Folcland* was subject to many burthens and exactions from which bocland was exempt. The possessors of *folcland* were bound to assist in the reparation of royal villas and in other public works. They were liable to have travellers and others quartered on them for subsistence; to give hospitality to kings and great men in their progresses through the country; to furnish them with carriages and relays of horses; and

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to extend the same assistance to their messengers, followers, and servants, and even to the persons who had charge of their hawks, horses, and hounds. Such at least are the burthens from which lands are liberated when converted by charter into boecland. Boecland was liable to none of these exactions. It was released from all services to the public, with the exception of contributing to military expeditions, and to the reparation of castles and bridges. These duties or services were comprised in the phrase of *trinoda necessitas*, which were said to be incumbent on all persons, so that none could be excused from them."

(b). The obligations of the *trinoda necessitas*, and especially that of military service, have been sometimes thought to denote a feudal tenure. There is, however, a confusion into which we may fall by not sufficiently discriminating the rights of a king as chief lord of his vassals, and as sovereign of his subjects. In every country, however, the supreme power is entitled to use the arm of each citizen in the public defence. The usage of all nations agrees with common reason in establishing this great principle. There is nothing, therefore, peculiarly feudal in this military service of landholders; it was due from the allodial proprietors upon the Continent; it was derived from their German ancestors; it had been fixed, probably, by the legislatures of the Heptarchy upon the first settlement in Britain. * * *

(c). Whether, therefore, the law of feudal tenures can be said to have existed in England before the conquest, must be left to every reader's determination. Perhaps any attempt to decide it positively would end in a verbal dispute. The name will probably not be found in any genuine Anglo-Saxon record. Of the form, or the peculiar ceremonies and incidents of a regular fief, there is some, though not much, appearance. But those who reflect upon the dependence in which free and even noble tenants held their estates of other subjects, and upon the privileges of territorial jurisdiction, will, I think, perceive much of the intrinsic character of the feudal relation, though in a less mature and systematic shape than it assumed after the Norman conquest. * *

(d). It will probably be never disputed again that lands were granted by a military tenure before the conquest. But the general tenure of lands was still allodial. We may probably not err very much in supposing that the state of tenures in England under Canute or the Confessor was a good deal like those in France under Charlemagne or Charles the Bald—an allodial trunk with numerous branches of feudal benefice grafted into it. But the conversion of the one mode of tenure into the other, so frequent in France, does not appear by evidence to have prevailed on this side of the channel. On this question Professor Stubbs remarks (Select Charters, &c., p. 113): "From the end of the tenth century a change sets in which might ultimately, by a slow and steady series of causes and consequences, have produced something like Continental feudalism. The great position taken by Edgar and Canute, to whom the princes of the other kingdoms of the island submitted as vassals, had the effect of centralising the Government and increasing the power of the king. Early in the eleventh century he seems to have entered on the right of disposing of the public land without reference to the witan, and of calling up to his own court, by writ, suits which had not yet exhausted the powers of the lower tribunals. The number

of royal vassals was thus greatly increased, and with them the powers of royal and noble jurisdictions. Canute proceeded so far in the direction of imperial feudalism as to re-arrange the kingdom under a very small number of great earls, who were strong enough in some cases to transmit their authority to their children, though not without new investiture, and who, had time been given for the system to work, would have developed the same sort of feudality as prevailed abroad. Already by sub-infeudation, or by commendation, great portions of the land of the country were being held by a feudal tenure, and the allodial tenure, which had once been universal, was becoming the privilege of a few great nobles too strong to be unseated, or a local usage in a class of land-owners too humble to be dangerous."

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3.—WILLIAM THE CONQUEROR.

I. The commencement of his administration was tolerably equitable. Though many confiscations took place in order to gratify the Norman army, yet the mass of the property was left in the hands of its former possessors. * * Impressed by the frequent risings of the English at the commencement of his reign, and by the recollection, as one historian observes, that the mild government of Canute had only ended in the expulsion of the Danish line, he formed the scheme of riveting such fetters upon the conquered nation that all resistance should become impracticable. * * An extensive spoliation of property accompanied these revolutions.

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II. (a). It appears by the great national survey of Domesday Book, completed near the close of the conqueror's reign, that the tenants *in capite* of the crown were generally foreigners. Undoubtedly there were a few left in almost every country, who still enjoyed the estates which they held under Edward the Confessor, free from any superiority but that of the crown, and were denominated, as in former times, the king's thanes. Cospatric, son perhaps of one of that name who had possessed the earldom of Northumberland, held forty-one manors in Yorkshire, though many of them are stated in Domesday to be waste. But inferior freeholders were much less disturbed in their estates than the higher class. It is manifest, by running the eye over some pages of the list of mesne tenants at the time of the survey, how mistaken is the supposition that few of English birth held entire manors. They form a large proportion of nearly 8,000 *mesne* tenants. And we may presume that they were in a very much greater proportion among the "*liberi homines*," who held lands subject only to free services, seldom or never very burthensome. It may be added that many Normans, as we learn from history, married English heiresses, rendered so frequently, no doubt, by the violent deaths of their fathers and brothers, but still transmitting ancient rights, as well as native blood, to their posterity.

(b). This might induce us to suspect that, great as the spoliation might appear in modern times, and almost completely as the nation was excluded from civil power in the commonwealth, there is some exaggeration in the language of those writers who represent them as universally reduced to a state of penury and servitude. But whatever may have been the legal condition of the English mesne tenant by knight--

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service or socage (for the case of villeins is of course not here considered) during the first two Norman reigns, it seems evident that he was protected by the charter of Henry I, in the hereditary possession of his lands, subject only to a "lawful and just relief towards his lord." For this charter is addressed to all the liege men of the crown, "French and English;" and purports to abolish all the evil customs by which the kingdom had been oppressed, extending to the tenants of the barons as well as those of the crown.

(c). The vast extent of the Norman estates *in capite* is apt to deceive us. In reading of a baron who held forty or fifty or one hundred manors, we are prone to fancy his wealth something like what a similar estate would produce at this day. But if we look at the next words, we shall continually find that some one else held of him; and this was a holding by knight's service, subject to feudal incidents no doubt, but not leaving the seigniority very lucrative, or giving any right of possessing ownership over the land. The real possessions of the tenant of a manor, whether holding as chief or not, consisted in the demesne lands, the produce of which he obtained without cost by the labour of the villeins, and in whatever other payments they might be found to make in money or kind. It will be remembered, what has been more than once inculcated, that at this time the villani and bordarii, that is, ceorls, were not like the villeins of a later time, destitute of rights in their property; their condition was tending to the lower stage, and with a Norman lord they were in much danger of oppression; but they were "law worthy," they had a civil *status* (to pass from one technical style to another) for a century after the conquest. * *

(d). One innovation made by William upon the feudal law is very deserving of attention. By the leading principle of feuds an oath of fealty was due from the vassal to the lord of whom he immediately held his land, and to no other. The king of France, long after this period, had no feudal and scarcely any royal authority over the tenants of his own vassals. But William received at Salisbury in 1085 the fealty of all landholders in England, both those who held in chief and their tenants; thus breaking in upon the feudal compact in its most essential attribute, the exclusive dependence of a vassal upon his lord. And this may be reckoned among the several causes which prevented the continental notions of independence upon the crown from ever taking root among the English aristocracy. * *

4. Here we find that even William the Conqueror respected the titles of the peasant proprietors; the seigniorial rights over vast estates, which he conferred on his barons, did not give them right of possessing ownership over the land; such right on their part was confined to their demesne lands, which correspond to the neej lands of zemindars.

I. (a). The feudal institutions were far less military in England than upon the Continent. From the time of Henry II, the *escuage*, or pecuniary commutation for personal service, became almost universal. * * Thus the tenure of knight service was not in effect much more peculiarly connected with the profession of arms than that of socage.

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II. (b). A respectable class of free socagers, having, in general, full rights of alienating their lands, and holding them probably at a small certain rent from the lord of the manor, frequently occur in Domesday Book. Though these were derived from the superior and more fortunate Anglo-Saxon *eorls*, they were perfectly exempt from all marks of villeinage, both as to their persons and estates. Most have derived their name from the Saxon *soc*, which signifies a franchise, especially one of jurisdiction. * * They were all Englishmen, and their tenure strictly English, which seems to have given it credit in the eyes of our lawyers. * * Certainly Glanvil, and still more Bracton, treat the tenure in free socage with great respect. And we have reason to think that this class of freeholders was very numerous even before the reign of Edward I.

5. Thus we find that the proprietary rights of the Yeomanry, which originated in the customs and institutions of the Anglo-Saxons, were respected in the Norman Conquest; they were afterwards destroyed by the usurpations of the aristocracy, not by any fiat representing the deliberate judgment of England's statesmen and law-givers, that peasant proprietors, who during their existence in England were the saviours of English society, the defenders of its liberties, should cease from the land for the public good.

6. The following extracts are from Mr. Green's Short History of the English People:—

I. For the fatherland of the English race we must look far away from England itself. In the fifth century after the birth of Christ, the one country which bore the name of England was what we now call Sleswick, a district in the heart of the peninsula, which parts the Baltic from the Northern Seas. * * The dwellers in this district were one out of three tribes, all belonging to the same low German branch of the Teutonic family, who at the moment when history discovers them were bound together in some loose fashion by the ties of a common blood and a common speech. * * The basis of the society of these English folk was the free landholder. In the English tongue he alone was known as "the man," or "the churl;" and two English phrases set his freedom vividly before us. He was "the free-necked man," whose long hair floated over a neck that had never bent to a lord. He was the "weaponed man," who alone bore spear and sword, for he alone possessed the right which in such a state of society formed the main check upon lawless outrage, the right of private war. * * *

J. R. Green's
Short History of
the English people.Anglo-Saxon
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II.—YEARS 449 TO 607.

The West Saxons have left a record of the solemn election by which they chose Cerdic for their king. Such a choice at once drew the various villages and tribes of each community closer together than of old, while the usage, which gave all unoccupied or common ground to the new ruler, enabled him to surround himself with a chosen war-band of companions, servants, or "thegns," as they were called, who were rewarded for their service by gifts from it, and who at last became a nobility which superseded the "eorls" of the original English constitution. And as war begat the king and the military

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noble, so it all but begat the slave. There had always been a slave class, a class of the nufree, among the English as among all German peoples; but the number of this class, if unaffected by the conquest of Britain, were swelled by the wars which soon sprang up among the English conquerors. * * But war was not the only cause of the increase of this slave class. The number of the "nufree" were swelled by debt and crime. Famine drove men to "bend their heads in the evil days for wheat." The debtor, unable to discharge his debt, flung on the ground the freeman's sword and spear, took up the labourer's mattock, and placed his head as a slave within a master's hands. The criminal, whose kinsfolk would not make up his fine, became the crime-serf of the plaintiff or the king. * * The slave became part of the live-stock of the estate, to be willed away at death with the horse or the ass, whose pedigree was kept as carefully as his own. His children were bondsmen like himself; even the freeman's children by a slave-mother inherited the mother's taint. The cabins of the nufree clustered round the home of the freeman, as they had clustered round the villa of the Roman gentleman; ploughman, shepherd, goatherd, swincherd, oxherd, and cowherd, dairymaid, barman, sewer, hayward, and woodward, were alike serfs. It was not such a slavery as that we have known in modern times, for stripes and bonds were rare; if the slave were slain, it was by an angry blow, not by the lash. But his lord could slay him if he would; it was but a chattel the less.

III.—YEARS 892-1016.

(a). After times looked back fondly to "Edgar's Law" as it was called, in other words, to the English constitution, as it shaped itself in the hands of Edgar's minister. Peace and change had greatly modified the older order which had followed on the English conquest. Slavery was gradually disappearing before the efforts of the church. Theodore had denied Christian burial to the kidnapper, and prohibited the sale of children by their parents after the age of seven. Egberht of York punished any sale of child or kinsfolk with excommunication. The murder of a slave by lord or mistress, though no crime in the eye of the State, became a sin for which penance was due to the church. The slave was exempted from toil on Sundays and holidays; here and there he became attached to the soil, and could only be sold with it; sometimes he acquired a plot of ground, and was suffered to purchase his own release. Æthelstan gave the slave class a new rank in the realm by extending to it the same principles of mutual responsibility for crime which were the basis of order among the free. The church was far from contenting herself with this gradual elevation. Wilfrith led the way in the work of emancipation by freeing two hundred and fifty serfs whom he found attached to his estate at Selsey. Manumission became frequent in wills, as the clergy taught that such a gift was a boon to the soul of the dead. At the Synod of Chelsea the bishops bound themselves to free at their decease all serfs on their estates who had been reduced to serfdom by want or crime. * *

(b). But the decrease of slavery was more than compensated by the increasing degradation of the bulk of the people. Much, indeed, of the

dignity of the free farmer had depended on the contrast of his position with that of the slave; free among his equals, he was lord among his serfs. But the change from freedom to villeinage, from the freeholder who knew no superior but God and the law, to the tenant bound to do service to his lord, which was annihilating the old English liberty in the days of Dunstan, was owing mainly to a change in the character of English kingship. The union of the English realms had removed the king, as his dominions extended farther and farther from his people. * * The older nobility of blood died out before the new nobility of the court. * * The thegn advanced with the advance of the king; he absorbed every post of honour, and became ealdorman, reeve, bishop, judge; while the common ground of the mass now became folk-land in the hands of the king, and was carved out into estates for his dependents.

(c). With the advance of the thegn fell the freedom of the peasant. The principle of personal allegiance embodied in the new nobility widened into a theory of general dependence. By Ælfred's day it was assumed that no man could exist without a lord. The ravages and the long insecurity of the Danish wars aided to drive the free farmer to seek protection from the thegn. His freehold was surrendered to be received back as a fief, laden with service to its lord; gradually the "lordless man" became a sort of outlaw in the realm. The free churl sank into the vellein, and with his personal freedom went his share in the government of the state.

IV.—YEARS 1068-1071—(NORMAN CONQUEST).

(a). As the conqueror of England, William introduced the military organization of feudalism, so far as was necessary for the secure possession of his conquests. The ground was already prepared for such an organization; we have seen the beginnings of English feudalism in the warriors, the "companions" or "thegns," who were personally attached to the king's war-band, and received estates from the royal domain in reward for their personal service. Under the English kings this feudal distribution of estates had greatly increased, the bulk of the nobles having followed the royal example and united their tenants to themselves by a similar process of sub-infeudation. Feudal tenures.

(b). On the other hand, the pure freeholders, the class which formed the basis of the original English society, had been gradually reduced in number, partly through imitation of the class above them, but still more through the incessant wars and invasions which drove them to seek protectors among the thegns, even at the cost of independence. Feudalism, in fact, was superseding the older freedom in England even before the reign of William, as it had already superseded it in Germany or France. But the tendency was quickened and intensified by the Conqueror. The desperate and universal resistance of his English subjects forced William to hold by the sword what the sword had won, and an army strong enough to crush at any moment a natural revolt was necessary for the preservation of his throne. Such an army could only be maintained by a vast confiscation of the soil. The failure of the English risings cleared the way for its establishment; the greater part of the higher nobility had fallen in battle or fled into exile, while the lower thegnhood had either forfeited the whole of their lands or received a portion of

power of the nobles had been accompanied by measures which robbed them of their legal jurisdiction. The circuits of the Judges were restored, and instructions were given them to enter the manors of the barons and make inquiry into their privileges; while the office of sheriff was withdrawn from the great nobles of the shire, and entrusted to the lawyers and courtiers who already furnished the staff of justices. The resentment of the barons found an opportunity of displaying itself. * * * The revolt of the baronage, easily as it had been subdued, became a pretext for fresh blows at their power. The greatest of these was his Assize of Arms, which restored the national militia to the place which it had lost at the conquest. The substitution of sentage for military service had practically freed the crown from the support of the baronage and their fendal retainers; the assize substituted for this feudal organization the older military obligation of every freeman to serve in the defence of the realm. Every knight was forced to arm himself with coat of mail and shield and lance; every freeholder with lance and hauberk; every burgess and poorer freeman with lance and iron helmet. This universal levy of the armed nation was wholly at the disposal of the king for purposes of defence.

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VI.—YEARS 1217 TO 1257—(HENRY III).

The same loss of spiritual power, the same severance from natural feeling, was seen in the English Church itself. Plundered and humiliated as they were by Rome, the worldliness of the bishops, the oppression of the ecclesiastical courts, the disuse of preaching, the decline of the monastic orders into rich land-owners, the non-residence and ignorance of the parish priests, robbed the clergy of all spiritual influence.

VII.—YEARS 1283 TO 1295—(EDWARD I).

In legislation, as in his judicial reform, Edward did little more than renew and consolidate the principles which had been already brought into practical working by Henry the II. His Statute of Winchester followed the precedent of the "Assize of Arms" in basing the preservation of public order on the revival and development of the local system of frank-pledge. Every man was bound to hold himself in readiness, duly armed for the king's service, or the hue and cry which pursued the felon. Every district was made responsible for crimes committed within its boundaries.* * * The Statute of Mortmain, which prohibited the alienation of lands to the Church under pain of forfeiture, was based on the constitutions of Clarendon, but it is difficult to see in it more than a jealousy of the rapid growth of ecclesiastical estates, which, grudged as it was by their baronage, was probably beneficial to the country at large, as military service was rendered by Church fees as rigidly as by lay, while the Churchmen were the better landlords.* * * We trace the same conservative tendency, the same blind desire to keep things as they were, during an age of rapid transition in the great land law which bears the technical name of the Statute "Quia Emptores." It is one of those legislative efforts which mark the progress of a great social revolution in the country at large. The

number of the greater barons was in fact diminishing every day, while the number of the country gentry and of the more substantial yeomanry was increasing with the increase of the national wealth. This increase showed itself in the growing desire to become proprietors of land. Tenants of the greater barons received under-tenants on condition of their rendering similar services to those which they themselves rendered to their lords; and the baronage, while duly receiving the services in compensation for which they had originally granted their land in fee, saw with jealousy the feudal profits of these new under-tenants, the profits of wardship or of relief, and the like; in a word, the whole increase in the value of the estate consequent on its sub-division and higher cultivation, passing into other hands than their own. To check this growth of a squirearchy, as we should now term it, the statute provided that in any case of alienation the sub-tenant should henceforth hold, not of the tenant, but directly of the superior lord; but its result seems to have been to promote instead of hindering the sub-division of land. The tenant who was compelled before to retain in any case so much of the estate as enabled him to discharge his feudal services to the over-lord of whom he held it, was now enabled by a process analogous to the sale of "tenant right," to transfer both land and service to new holders.

VIII.—YEARS 1290 TO 1305 (EDWARD II).

(a). In England the town was originally, in every case save that of London, a mere bit of land within the lordship, whether of the king or some great noble or ecclesiastic, whose inhabitants happened, either for purposes of trade or prohibition to cluster together more closely than elsewhere. * * The English town in its beginning was simply a piece of the general country, organised and governed in the same way as the manors around it; that is to say, justice was administered, its annual rent collected, and its customary services exacted by the reeve or steward of the lord to whose estate it belonged. * * But when once these dues were paid, and these services rendered, the English townsman was practically free. His rights were as rigidly defined by custom as those of his lord, property, and person alike were secured against arbitrary seizure. * * * Whenever we get a glimpse of the inner history of an English town, we find the same peaceful revolution in progress, services disappearing, through disuse or omission, while privileges and insecurities are being purchased in hard cash. The lord of the town, whether he were king, baron, or abbot, was commonly thriftless or poor, and the capture of a noble, or the campaign of a sovereign, or the building of some new minster by a prior, brought about an appeal to the thrifty burghers, who were ready to fill again the master's treasury at the price of the strip of parchment which gave them freedom of trade, of justice, and of government. * * For the most part the liberties of our towns were bought in this way by sheer hard bargaining. * * At the close of the thirteenth century, this work of outer emancipation was practically complete. * *

(b). During the progress of this outer revolution, the inner life of the English town was in the same quiet and hardly conscious way developing itself from the common form of the life around it into a form specially

its own. Within or without the ditch or stockade which formed the first boundary of the borough, land was from the first the test of freedom, and the possession of land was what constituted the townsman. * * In England the "landless" man had no civic, as he had no national existence; the "town" was simply an association of landed proprietors within its bounds; nor was there anything in this association, as it originally existed, which could be considered peculiar or exceptional. The constitution of the English town, however different its form may have afterwards become, was at the first simply that of the people at large. We have before seen that among the German races society rested on the basis of the family; that it was the family who fought and settled side by side, and the kinsfolk who were bound together in ties of mutual responsibility to each other and to the law. As society became more complex and less stationary, it naturally outgrew these simple ties of blood, and in England this dissolution of the family bond seems to have taken place at the very time when Danish incursions and the growth of a feudal temper among the nobles rendered an isolated existence more perilous for the freeman. His only recourse was to seek protection among his fellow freemen, and to replace the older brotherhood of the kinsfolk by a voluntary association of his neighbours for the same purposes of order and self-defence. The tendency to unite in such "Frith-guilds" or Peace-clubs became general throughout Europe during the ninth and tenth centuries, but on the Continent it was roughly met and repressed. The successors of Charles the Great enacted penalties of scourging, nose-slitting, and banishment, against voluntary unions, and even a league of the poor peasants of Gaul against the inroads of the Northmen was suppressed by the sword of the Frankish nobles. In England the attitude of the kings was utterly different. The system of "franc-pledge," or free engagement of neighbour for neighbour, was accepted after the Danish wars as the base of social order. Alfred recognised the common responsibility of the members of the "frith-guild" side by side with that of the kinsfolk, and Athelstan accepted "frith-gilds" as the constituent element of borough life in the Domes of London.

(c). The frith-gild, then, in the earlier English town, was precisely similar to the frith-gilds which formed the bases of social order in the country at large. An oath of mutual fidelity among its members was substituted for the tie of blood, while the gild feast, held once a month in the common hall, replaced the gathering of the kinsfolk round their family hearth. But within this new family the owner of the frith-gild was to establish a mutual responsibility as close as that of the old. "Let all share the same lot," runs the law; "if any misdo, let all bear it." Its member could look for aid from his gild brothers in atoning for any guilt incurred by mishap. He could call on them for assistance in case of violence or wrong; if falsely accused, they appeared in court as his compurgators; if poor, they supported, and when dead they buried him. On the other hand, he was responsible to them, as they were to the State, for order and obedience to the laws. A wrong of brother against brother was also a wrong against the general body of the gild, and was punished by fine, or in the last resort by expulsion, which left the offender a "lawless" man and an outcast. * *

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(d). In their beginnings our boroughs seem to have been mainly gatherings of persons engaged in agricultural pursuits; the first Domesday of London provide especially for the recovery of cattle belonging to the citizens. But as the increasing security of the country invited the farmer or the squire to settle apart in his own fields, and the growth of estate and trade told on the towns themselves, the difference between town and country became more sharply defined.

IX.—YEARS 1377 TO 1381—(RICHARD II).

(a). The religious revolution (Wycliffe) which we have been describing gave fresh impulse to a revolution of even greater importance, which had for a long time been changing the whole face of the country. The manorial system on which the social organization of every rural part of England rested, had divided the land, for the purposes of cultivation and of internal order, into a number of large estates, in each of which about a fourth of the soil was usually retained by the owner of the manor as his demesne, or home-farm, while the remainder was distributed, at the period we have reached, among tenants who were found to render service to their lord. We know hardly anything of the gradual process by which these tenants had arisen out of the slave class who tilled the lands of the first English settlers. The slave, indeed, still remained, though the number of pure "serfs" bore a small proportion to the other cultivators of the soil. He was still, in the strictest sense, his lord's property: he was bound to the soil; he paid head-money for license to remove from the estate in search of trade or hire, and a refusal to return, on recall by his owner, would have ended in his pursuit as a fugitive outlaw.

(b). But even this class had now acquired definite rights of its own; and although we still find instances of the sale of serfs "with their litter," or family, apart from the land they tilled, yet in the bulk of cases, the amount of service due from the serf had become limited by custom, and on its due rendering, his holding was practically as secure as that of the freest tenant on the estate.

(c). But at a time earlier than any record we possess, the mass of the agricultural population had risen to a position of far greater independence than this, and now formed a class of peasant proprietors, inferior, indeed, to the older Teutonic freeman, but far removed from the original serf. Not only had their service and the time of rendering it become limited by custom, not only had the possession of each man's little hut with the plot around it and the privilege of hiring out a few cattle on the waste of the manor, passed from mere indulgences granted and withdrawn at a lord's expense into rights which could be pleaded at law, but the class as a whole were no longer "in the power of the lord." The claim of the proprietors over peasants of this kind ended with the due rendering of their service in the cultivation of his demesne, and this service might be rendered either personally or by deputy. It was the nature and extent of this labour-rent which determined the rank of the tenants among themselves. The villein, or free-tenant, for instance, was only bound to gather in his lord's harvest, and to aid in the ploughing and sowing of autumn and Lent, while the cottar, the

bordar, and labourer were bound to aid in the work of the home-farm throughout the year. The cultivation, indeed, of the home-farm, or, as it was then called, the demesne, rested wholly with the tenants; it was by them that the great grange of the lord was filled with sheaves, his sheep sheared, his grain malted, the wood hewn for his hall fire. The extent of those services rested wholly on tradition, but the number of teams, the fines, the reliefs, the heriots which the lord could claim was, at this time, generally entered on the court-roll of the manor, a copy of which became the title-deed of the tenants, and gave them the name of copyholders, by which they became known at a later period. Disputes were easily settled by the steward of the manor, on reference to this roll or on oral evidence of the custom at issue; but a social arrangement, eminently characteristic of the English spirit of compromise, generally secured a fair adjustment of the claims of employer and employed. It was the duty of the lord's bailiff to exact their dues from the tenantry; but his co-adjutor in this office, the reeve or foreman of the manor, was chosen by the tenants themselves, and acted as the representative of their interests and their rights.

(d). The first disturbance of the system of tenure which we have described sprang from the introduction of leases. The lord of the manor, instead of cultivating the demesne through his own bailiff, often found it more convenient and profitable to let the manor to a tenant at a given rent, payable either in money or in kind. Thus we find the manor of London leased by the Chapter of St. Paul's at a very early period on a rent which comprised the payment of grain both for bread and ale, of alms to be distributed at the cathedral door, of wood to be used in its bake-house and brewery, and of money to be spent in wages. It is to this system of leasing, or rather to the usual term for the rent it entailed (feorm, from the Latin *firma*) that we owe the words "farm" and "farmer," the growing use of which from the twelfth century marks the first step in the rural revolution which we are examining. It was a revolution which made little direct change in the manorial system, but its indirect effect in breaking the tie on which the feudal organization of the manor rested, that of the tenant's personal dependence on his lord, and in affording an opportunity by which the wealthier among the tenantry could rise to a position of apparent equality with their older masters, was of the highest importance.

(e). This earlier step, however, in the modification of the manorial system, of the rise of the farmer class, was soon followed by one of a far more serious character in the rise of the free labourer. Labour, whatever right it might have attained in other ways, was as yet, in the strictest sense, bound to the soil; neither villein nor serf had any choice, either of a master or of a sphere of toil. The tenant was born, in fact, to his holding and to his lord. But the advance of society, and the natural increase of population, had for a long time been silently freeing the labourer from this local bondage. The influence of the Church had been exerted in promoting emancipation, as a work of piety, on all estates but its own. The fugitive bondmen found freedom in a flight to chartered towns, where a residence during a year and a day conferred franchise. The increase of population had a far more

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serious effect. The number of the English people seem to have all but tripled since the conquest, and as the law of gavel-kind, which was applicable to all landed estates not held by military tenure, divided the inheritance of the tenantry equally among their sons, the holding of each tenant and the service due from it became divided in a corresponding degree. The labour-rent thus became more difficult to enforce at the very time that the increase of wealth among the tenantry and the rise of a new spirit of independence made it more burthensome to those who rendered it.

(f). It was probably from this cause that the commutation of the services of labour for a money payment, which had long prevailed on every estate, gradually developed into a general commutation of service. We have already witnessed the silent progress of this remarkable change in the case of St. Edmondsbury, but the practice soon became universal, and "malt silver," "wood silver," and "larder silver" were gradually taking the place of the older personal services on the court rolls, at the opening of the fourteenth century. Under the Edwards the process of commutation was hastened by the necessities of the lords themselves. The luxury of the time, the splendour and pomp of chivalry, the cost of incessant campaigns, drained the purses of knight and baron, and the sales of freedom to the serf or exemption from services to the villein afforded an easy and tempting mode of refilling them. In this process Edward III. himself led the way; commissioners were sent to royal estates for the special purpose of selling manumissions to the king's serfs, and we still possess the names of those who were enfranchised with their families by a payment of hard cash in aid of the exhausted exchequer.

(g). By this entire detachment of the serf from actual dependence on the land, the manorial system was even more radically changed than by the rise of the serf into a copyholder. The whole social condition of the country, in fact, was modified by the appearance of a new class. The rise of the free labourer had followed that of the farmer, but labour was no longer bound to one spot or one master; it was free to hire itself to which employer and to choose what field of employment it would. At the close of Edward's reign, in fact, the lord of a manor had been reduced over a large part of England to the possession of a modern landlord, receiving a rental in money from his tenants, and dependent for the cultivation of his own demesne on hired labour; while the wealthier of the tenants themselves often took the demesne on lease as its farmers, and thus created a new class intermediate between the larger proprietors and the customary tenants.

(h). The impulse towards a wider liberty given by the extension of this process of social change was soon seen on the appearance for the first time in our history of a spirit of social revolt. A parliamentary statute of this period (1377) tells us that villeins and tenants of land on villeinage withdrew their customs and services from their lords, having attached themselves to other persons who maintained and abetted them, and who, under colour of exemptions from Domesday of the manors and villas where they dwelt, claim to be quit of all manner of services, either of their body or of their lands, and would suffer no distress or other course of justice to be taken against them;

the villeins aiding their maintainers by threatening the officers of their lords with peril to life and limb, as well by open assemblies as by confederacies to support each other. The copyholder was struggling to become a freeholder, and the farmer (perhaps) to be recognised as proprietor of the demesne which he held on lease.

(i). It was while this struggle was growing in intensity, that a yet more formidable difficulty met the lords who had been driven by the enfranchisement of their serfs to rely on hired labour. Everything depended on the abundant supply of free labourers, and this abundance suddenly disappeared. The most terrible plague which the world ever witnessed (the Black Death, 1349) advanced at this juncture from the East, and after devastating Europe from the shores of the Mediterranean to the Baltic, swooped at the close of 1348 upon Britain. The traditions of its destructiveness, and the panic-struck words of the statutes which followed it, have been more than justified by modern research. Of the three or four millions who then formed the population of England, more than one-half were swept away in its repeated visitations. * *

(k). The whole organization of labour was thrown out of gear. The scarcity of hands made it difficult for the minor tenants to perform the services due for their lands, and only a temporary abandonment of half the rent by the land-owners induced the farmers to refrain from the abandonment of their farms. For the time, cultivation became impossible. "The sheep and cattle strayed through the fields and corn," says a contemporary, "and there were none who could drive them. Even when the first burst of panic was over, the sudden rise of wages consequent on the enormous diminution in the supply of free labour, though accompanied by a corresponding rise in the price of food, rudely disturbed the course of industrial employments; harvests rotted on the ground, and fields were left untilled, not merely from the scarcity of hands, but from the strife which now for the first time revealed itself

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(m). Sterner measures were soon found to be necessary. Not only was the price of labour fixed by the Parliament of 1350, but the labour class was once more tied to the soil. The labourer was forbidden to quit the parish where he lived in search of better-paid employment; if he disobeyed, he became a "fugitive," and subject to imprisonment at the hands of the justices of the peace. To enforce such a law literally must have been impossible, for corn had risen to so high a price that a day's labour at the old wages would not have purchased wheat enough for a man's support. But the land-owners did not flinch from the attempt. The repeated re-enactment of the law shows the difficulty of applying it, and the stubbornness of the struggle which it brought about. The prices and forfeitures which were levied for infractions of its provisions formed a large source of royal revenue, but so ineffectual were the original penalties, that the run-away labourer was at last ordered to be branded with a hot iron on the forehead, while the harbouring serfs in towns was rigorously put down.

(n). Nor was it merely the existing class of free-labourers which was attacked by this re-actionary movement. Not only was the process of emancipation suddenly checked, but the ingenuity of the lawyers, who were employed as stewards of each man, or was recklessly exercised in cancelling, on grounds of informality, manumissions and exemptions which had passed without question, and in bringing back the villein and the serf into a bondage from which they held themselves free. * * The cry of the poor found a terrible utterance in the words of a mad priest of Kent (John Ball), as the courtly Froissart calls him. * * It was the tyranny of property that then, as ever, roused the defiance of socialism. A spirit fatal to the whole system of the middle ages breathed in the popular rhyme which condensed the levelling doctrine of John Ball;—"When Adam delved and Eve span, who was then the gentleman?" * *

X.—YEARS 1381 TO 1399.

(a). (After describing the insurrection under Wat Tyler) the strife, indeed, which Longland would have averted raged only the fiercer after the repression of the Peasant Revolt. The Statutes of labourers, effective as they proved in sowing hatred between rich and poor, and in creating a mass of pauperism for later times to deal with, were powerless for their immediate ends, either in reducing the actual rate of wages, or in restricting the mass of floating labour to definite areas of employment. During the century and a half after the Peasant Revolt, villeinage died out so rapidly that it became a rare and antiquated thing. A hundred years after the Black Death, we learn from a high authority that the wages of an English labourer "commanded twice the amount of the necessities of life which could have been obtained for the wages paid under Edward III." * *

(b). But there were seasons of the year during which employment for this floating mass of labour was hard to find. In the long interval between harvest-tide and harvest-tide, work and food were alike scarce in the mediæval homestead. * * During the long spring and summer the free labourer, and the "waster that will not work but wander about,

that will eat no bread but the finest wheat, nor drink but of the best and brownest ale," was a source of social and political danger. "He grieveth him against God and grudgeth against reason, and then curseth he the king and all his council after such law to allow labourers to grieve." The terror of the land-owners expressed itself in legislation, which was a fitting sequel of the Statutes of Labourers. They forbade the child of any tiller of the soil to be apprenticed in a town. They prayed Richard to ordain "that no bondman nor bondwoman shall place their children at school, as has been done, so as to advance their children in the world by their going into the church." The new colleges which were being founded at the two Universities at this moment closed their gates upon villeins.

(c). It was the failure of such futile efforts to effect their aim which drove the energy of the great proprietors into a new direction, and in the end revolutionised the whole agricultural system of the country. Sheep farming required fewer hands than tillage, and the scarcity and high price of labour tended to throw more and more land into sheep farms. In the decrease of personal service, as villeinage died away, it became the interest of the lord to diminish the number of tenants on his estate, as it had been before his interest to maintain it, and he did this by massing the small allotments together into larger holdings. By this course of eviction the number of the free-labour class was enormously increased, while the area of employment was diminished; and the social danger from vagabondage and the "sturdy beggar" grew every day greater till it brought about the despotism of the Tudors.

XI.—YEARS 1450 TO 1471.

Yeomen and tradesmen formed the bulk of the insurgents under John Cade. The "complaint of the Commons of Kent," which they laid before the Royal Council, is of enormous value in the light which it throws on the condition of the people. So utterly had Lollardism been extinguished, that not one of the demands touches on religious reform. The old social discontent seems to have subsided. The question of villeinage and serfage, which had roused Kent to its desperate rising in 1381, finds no place in its "complaint" of 1450. In the seventy years which had intervened, villeinage had died naturally away before the progress of social change. The Statutes of Apparel, which begin at this time to encumber the Statute Book, show in their anxiety to curtail the dress of the labourer and the farmer the progress of these classes in comfort and wealth; and from the language of the Statutes themselves it is plain that as wages rose, both farmer and labourer went on clothing themselves better in spite of sumptuary provisions. With the exception of a demand for the repeal of the Statute of Labourers, the programme of the Commons was now not social, but political.

XII.—YEARS 1471 TO 1509—(EDWARD IV TO HENRY VII).

(a). With the battle of Towton, which crushed the House of Lancaster, feudalism vanished away. The baronage lay a mere wreck after the storm of the Civil War. The church lingered helpless and perplexed till

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it was struck down by Thomas Cromwell. The traders and the smaller proprietors sank into political inactivity. On the other hand, the Crown, which only fifty years before had been the sport of every faction, towered into solitary greatness. The old English kingship, limited by the forces of feudalism or by the progress of constitutional freedom, faded suddenly away, and in its place we see, all absorbing and unrestrained, the despotism of the New Monarchy, by which name we express the character of the English sovereignty from the time of Edward IV to the time of Elizabeth. There is no kind of similarity between the kingship of the old English, the Norman, the Angevin, or the Plantagenet sovereigns and the kingship of the Tudors. The difference between them was the result, not of any gradual development, but of a simple revolution; and it was only by a revolution that the despotism of the New Monarchy was again done away. When the lawyers of the Long Parliament fell back for their precedents of constitutional liberty to the reign of the House of Lancaster, and silently regarded the whole period which we are about to traverse as a blank, they expressed not merely a legal truth, but an historical one. What the Great Rebellion in its final result actually did was to wipe away every trace of the New Monarchy, and to take up again the thread of our political development just where it had been snapped by the Wars of the Roses. But revolutionary as the change was, we have already seen in their gradual growth the causes which brought about the revolution. The social organization from which our political constitution had hitherto sprung, and on which it still rested, had been silently snapped by the progress of industry, by the growth of spiritual and intellectual enlightenment, and by changes in the art war. Its ruin was precipitated by religious persecution, by the disfranchisement of the Commons, and by the ruin of the baronage in the civil strife. Of the great houses some were extinct, others lingered only in obscure branches which were mere shadows of their former greatness. With the exception of the Poles, the Stanleys, and the Howards, themselves families of recent origin, hardly a fragment of the older baronage interfered from this time in the work of government. Neither the church nor the smaller proprietors of the country, who with the merchant citizens formed the Commons, were ready to take the place of the ruined nobles. * * The church still trembled at the progress of the new heresy, and clung for protection to the Crown. The close corporations of the towns needed protection for their privileges. The land-owners shared with the trader a profound horror of the war and disorder which they had witnessed, and an almost reckless desire to entrust the Crown with any power which would prevent its return.

(b). But above all, the landed and monied classes clung passionately to the Monarchy, as the one great force left which could save them from social revolt. The rising of the Commons of Kent shows that the troubles against which the statutes of labourers had been directed still remained as a formidable source of discontent. The great change in the character of agriculture, indeed, which we have before described,—the throwing together of the smaller holdings, the diminution of tillage, the increase of pasture lands—had tended largely to swell the numbers and turbulence of the floating labour class. The riots against “enclosures,”

of which we first hear in the time of Henry the Sixth, and which became a constant feature of the Tudor period, are indications not only of a constant strife going on in every quarter between the land-owner and the smaller peasant class, but of a mass of social discontent which was constantly seeking an outlet in violence and revolution. And at this moment the break-up of the military households of nobles by the attainders and confiscations of the Wars of the Roses, as well as by the Statute of Liveries which followed them, added a new element of violence and disorder to the seething mass. It is this social danger which lies at the root of the Tudor despotism. For the proprietary classes the repression of the poor was a question of life and death. The land-owner and the merchant were ready, as they have been ready in all ages of the world, to surrender freedom into the hands of the one power which could preserve them from what they deemed to be anarchy. It was to the selfish panic of wealthier land-owners that England owed the statute of labourers, with their terrible heritage of a pauper class. It was to the selfish panic of both the land-owner and the merchant that she owed the despotism of the New Monarchy. * *

(c). The necessity for summoning the two houses had, in fact, been removed by the enormous tide of wealth which the confiscations of the civil war poured into the Royal treasury. In the single bill of attainder which followed the victory of Towton, twelve great nobles and more than a hundred knights and squires were stripped of their estates to the king's profit. It was said that nearly a fifth of the land passed into the Royal possession at one period or another of the civil war.

XIII.—YEARS 1509 to 1520.

More's Utopia.—It is as he wanders through this dreamland of the new reason that More touches the great problems which were fast opening before the modern world—problems of labour, of crime, of conscience, of government. Merely to have seen and to have examined questions such as these would prove the keenness of his intellect; but its far-reaching originality is shown in the solutions which he proposes. Amidst much that is the pure play of an exuberant fancy, much that is mere recollection of the dreams of by-gone dreamers, we find again and again the most important social and political discoveries of later times anticipated by the genius of Thomas More. In some points, such as his treatment of the question of labour, he still remains far in advance of current opinion. The whole system of society around him seemed to him “nothing but a conspiracy of the rich against the poor.” Its economic legislation was simply the carrying out of such a conspiracy by process of law. “The rich are ever striving to pare away something further from the daily wages of the poor by private fraud and even by public law, so that the wrong already existing (for it is a wrong that those from whom the State derives most benefit should receive least reward) is made yet greater by means of the law of the State.” “The rich devise every means by which they may in the first place secure to themselves what they have amassed by wrong, and then take to their own use and profit, at the lowest possible price, the work and labour of the poor. And so soon as the rich decide on adopting these devices in

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the name of the public, then they become law." The result was the wretched existence to which the labour class was doomed, "a life so wretched that even a beast's life seems enviable." No such cry of pity for the poor, of protest against the system of agrarian and manufacturing tyranny, which had found its expression in the Statutes of Labourers, had been heard since the days of Piers Ploughman. But from Christendom, More turns with a smile to "Nowhere." In "Nowhere" the aim of legislation is to secure the welfare, social, industrial, intellectual, religious, of the community at large, and of the labour class as the true basis of a well-ordered commonwealth.

Aggregation
of farms.

XIV.—YEARS 1515 TO 1531.

(a). Wolsey's defeat in the endeavour to levy a property-tax of 20 per cent. saved English freedom for the moment; but the danger from which he shrunk was not merely that of a conflict with the sense of liberty. The murmurs of the Kentish squires only swelled the ever-deepening voice of public discontent. If the condition of the land question in the end gave strength to the Crown by making it the security for public order, it became a terrible peril at every crisis of conflict between the monarchy and the land-owners. The steady rise in the price of wool was at this period giving a fresh impulse to the agrarian changes which had been going steadily on for the last hundred years, to the throwing together of the smaller holdings, and the introduction of sheep-farming on an enormous scale. The merchant classes, too, whose prosperity we have already noticed, were investing largely in land, and "these farming gentlemen and clerking-knights," as Latimer bitterly styled them, were restrained by few traditions or associations in their eviction of the smaller tenants. The land, indeed, had been greatly underlet; "that which went heretofore for twenty or forty pounds a year," we learn from the same source, "now is let for fifty or a hundred;" and the new purchasers were quick in making profit by a general rise in rents. It had been only by the low scale of rent, indeed, that the small yeomanry class had been enabled to exist. "My father," says Latimer, "was a Yeoman, and had no lands of his own; only he had a farm of three or four pounds by the year at the uttermost, and hereupon he tilled so much as kept half-a-dozen men. He had walk for a hundred sheep, and my mother milked thirty kine; he was able and did find the king a harness with himself and his horse; while he came to the place that he should receive the king's wages. He kept me to school; he married my sisters with five pounds a piece; so that he brought them up in godliness and fear of God. He kept hospitality for his poor neighbours, and some alms he gave to the poor, and all this he did of the same farm, where he that now hath it payeth sixteen pounds by year or more, and is not able to do anything for his prince, for himself, nor for his children, or give a cup of drink to the poor."

(b). The bitterness of ejection was increased by the iniquitous means which were employed to bring it about. The farmers, if we believe More, were "got rid of either by fraud or force, or tired out with repeated wrongs into parting with their property." "In this way it comes to pass that these poor wretches, men, women, husbands, orphans, widows,

parents with little children, house-holds greater in number than in wealth (for arable farming requires many hands, while one shepherd and herdsman will suffice for a pasture farm),—all these emigrate from their native fields without knowing where to go.” The sale of their scanty household stuff drove them to wander homeless abroad, to be thrown into prison as vagabonds, to beg and to steal. Yet in the face of such a spectacle as this, we still find the old complaint of scarcity of labour, and the old legal remedy for it in a fixed scale of wages. The social disorder, in fact, baffled Wolsey’s sagacity, and he could find no better remedy for it than laws against the further extension of sheep-farms, and a terrible increase of public executions. Both were alike fruitless. Enclosures and evictions went on as before. “If you do not remedy the evils which produce thieves,” More urged with better truth, “the rigorous execution of justice in punishing thieves will be vain.” But even More could suggest a remedy which, efficacious as it subsequently was to prove, had yet to wait a century for its realization. “Let the woollen manufacture be introduced, so that honest employment may be found for those whom want has made thieves, or will make thieves ere long.” The mass of social disorder grew steadily greater; while the break up of the great military households of the nobles, which was still going on, and the return of wounded and disabled soldiers from the wars, introduced a yet more dangerous leaven of outrage and crime.

XV.—YEARS 1530 TO 1540—(HENRY THE EIGHTH).

(a). As an outlet for religious enthusiasm, indeed, monasticism was practically dead. The friar, now that his fervour of devotion and his intellectual energy had passed away, had sunk into the mere beggar. The monks had become mere land-owners. Most of their houses were anxious only to enlarge their revenues, and to diminish the number of those who shared them. In the general carelessness which prevailed as to the religious objects of their trust, in the wasteful management of their estates, in the indolence and self-indulgence which for the most part characterized them, the monastic houses simply exhibited the faults of all corporate bodies which have outlived the work which they were created to perform. But they were no more unpopular than such corporate bodies generally are. The Lollard cry for their suppression had died away. In the north, where some of the greatest abbeys were situated, the monks were on good terms with the country gentry, and their houses served as schools for their children; nor is there any sign of a different feeling elsewhere. But in Thomas Cromwell’s system there was no room for either the virtues or the vices of monarchism, for its indolence and superstition, or for its independence both of the episcopate and the throne. * *

Suppression of
monasteries.

(b). But in spite of the cry of “Down with them” which broke from the Commons as the report of the Royal Commissioners on Monasteries was read, the country was still far from desiring the utter downfall of the monastic system. A long and bitter debate was followed by a compromise which suppressed all houses whose income was below £200 a year, and granted their revenues to the Crown; but the great abbeys were still preserved intact.

APP. XVI.—YEARS 1540 TO 1553—(HENRY VIII AND EDWARD VI).
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DISSOLUTION OF
MONASTHERIES.

Para. 0, contd.

(a). And to this revival of a spirit of independence Henry largely contributed in the spoliation of the church and the dissolution of the monasteries. Partly from necessity, partly from a desire to create a large party interested in the maintenance of their ecclesiastical policy, Cromwell and the king squandered the vast mass of wealth which flowed into the treasury with reckless profligality. Something like a fifth of the actual land in the kingdom was in this way transferred from the holding of the church to that of nobles and gentry. Not only were the older houses enriched, but a new aristocracy was erected from among the dependants of the Court. The Russells, Cavendishes, and Fitz-Williams, are familiar instances of families which rose from obscurity through the enormous grants of church land made to Henry's courtiers. The old baronage was hardly crushed before a new aristocracy took its place. * * The leading part which the new peers took in the event which followed Henry's death gave a fresh strength and vigour to the whole order. But the smaller gentry shared in the general enrichment of the landed proprietors, and the new energy of the lords was soon followed by a display of fresh political independence among the Commons themselves. * * *

(b). One noble measure, indeed, the foundation of eighteen Grammar schools, was destined to throw a lustre over the name of Edward, but it had no time to bear fruit in his reign. All that men saw was religious and political chaos, in which ecclesiastical order had perished, and in which politics were dying down into the squabbles of a knot of nobles over the spoils of the church and the Crown. The plunder of the chauntries and the gilds failed to glut the appetite of the crew of spoilers. Half the lands of every see were flung to them in vain; the see of Durham had been wholly suppressed to satisfy their greed; and the whole endowments of the church were now threatened with confiscation. But while the courtiers gorged themselves with manors, the treasury grew poorer. The coinage was debased. Crown lands to the value of five millions of our modern money had been granted away to the friends of Somerset and Warwick.

XVII.—YEARS 1559 TO 1603—(ELIZABETH).

POOR LAWS.

(a). In one act of her civil administration Elizabeth showed the boldness and originality of a great ruler; for the opening of her reign saw her face the social difficulty which had so long impeded English progress, by the issue of a commission of inquiry which solved the problem by the system of poor-laws. * *

(b). She had hardly mounted the throne when she faced the problem of social discontent. Time and the natural development of new branches of industry were working quietly for the relief of the glutted labour-market; but, as we have seen under the Protectorate, a vast mass of disorder still existed in England, which found a constant ground of resentment in the enclosures and evictions which accompanied the progress of agricultural change. It was on this host of "broken men" that every rebellion could count for support; their mere existence, indeed, was

an encouragement to civil war, while in peace their presence was felt in the insecurity of life and property, in gangs of marauders which held whole countries in terror, and in "sturdy beggars" who stripped travellers on the road. Under Elizabeth, as under her predecessors, the terrible measures of repression, whose uselessness More had in vain pointed out, went pitilessly on; we find the magistrates of Somersetshire capturing a gang of a hundred at a stroke, hanging fifty at once on the gallows, and complaining bitterly to the Council of the necessity for waiting till the assizes before they could enjoy the spectacle of the fifty others hanging besides them.

(c). But the issue of a Royal Commission to enquire into the whole matter enabled the Queen (1562) to deal with the difficulty in a wiser and more effectual way. The old powers to enforce labour on the idle, and settlement on the vagrant class, were continued; and a distinction made as in former acts between these and the impotent and destitute persons who had been confounded with them; and each town and parish was held responsible for the relief of its indigent and disabled poor, as it had long been responsible for the employment of able-bodied mendicants. When voluntary contributions proved insufficient for this purpose, the justices in sessions were enabled by statute to assess all persons in a town or parish who refused to contribute in proportion to their ability. The principles embodied in these measures—the principle of local responsibility for local distress, and that of a distinction between the pauper and the vagabond—were more clearly defined in two statutes which marked the middle period of Elizabeth's reign. In 1572, houses of correction were established for the punishment and amendment of the vagabond class by means of compulsory labour; in 1597, power to levy and assess a general rate in each parish for the relief of the poor was transferred from the justices to its church-wardens. The well-known Act which matured and finally established this system, the 43rd of Elizabeth, remained the base of our system of pauper administration until a time within the recollection of living men. Whatever flaws a later experience has found in these measures, their wise and humane character formed a striking contrast to the legislation which had degraded our statute-book from the date of the Statute of Labourers; and their efficiency at the time was proved by the entire cessation of the great social danger against which they were intended to provide.

(d). Its cessation, however, was owing, not merely to law, but to the natural growth of wealth and industry throughout the country. The change in the mode of cultivation, whatever social embarrassment it might bring about, undoubtedly favoured production. Not only was a larger capital brought to bear upon the land, but the mere change in the system brought about a taste for new and better modes of agriculture; the breed of horses and of cattle was improved, and a far greater use made of manure and dressings. One acre under the new system produced, it was said, as much as two under the old. As a more careful and constant cultivation was introduced, a greater number of hands were required on every farm; and much of the surplus labour, which had been flung off the land on the commencement of the new system, was thus recalled to it.

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POOR LAWS.

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—
MANUFACTURES.
—
Para. 6, contd

(e). But a far more efficient agency in absorbing the unemployed was found in the development of manufactures. The linen trade was as yet of small value, and that of silk-weaving was only just introduced. But the woollen manufacture had become an important element in the national wealth. England no longer sent her fleeces to be woven in Flanders and to be dyed in Florence. The spinning of yarn, the weaving, frilling, and dyeing of cloth, was spreading rapidly from the towns over the country side. The worsted trade, of which Norwich was the centre, extended over the whole of the eastern counties. The farmers' wives began everywhere to spin their wool from their own sheep's backs into a coarse "home-spun." The South and the West still remained the great seats of industry and of wealth, the great homes of mining and manufacturing activity. The iron manufactures were limited to Kent and Sussex, though their prosperity in this quarter was already threatened by the growing scarcity of the wood which fed their furnaces and by the exhaustion of the forests of the weald. Cornwall was then as now, the sole exporter of tin, and the exportation of its copper was just beginning. The broad-cloths of the West claimed the palm among the woollen stuffs of England. * * But in the reign of Elizabeth the poverty and inaction to which the North had been doomed since the fall of the Roman rule began at last to be broken. We see the first signs of the coming revolution which has transferred English manufacturers and English wealth to the north of the Mersey and the Humber, in the mention which now meets us of the friezes of Manchester, the coverlets of York, and the dependence of Halifax on its cloth-trade. * *

(f). But it was not wholly with satisfaction that either Elizabeth or her ministers watched the social change which wealth was producing around them. They feared the increased expenditure and comfort which necessarily followed it, as likely to impoverish the land and to eat out the hardihood of the people. "England spendeth more in wines in one year," complained Cecil, "than it did in ancient times in four years." The disuse of salt-fish and the greater consumption of meat marked the improvement which was taking place among the agricultural classes. The rough and wattled farm-houses were being superseded by dwellings of brick and stone. Pewter was replacing the wooden trenchers of the earlier yeomanry; there were yeomen who could boast of a fair show of silver plate. It is from this period, indeed, that we can first date the rise of a conception which seems to us now a peculiarly English one—the conception of domestic comfort.

XVIII.—YEARS 1629 TO 1640—(CHARLES I).

The people were as stubborn as their king. * * * Meanwhile they would wait for better days, and their patience was aided by the general prosperity of the country. The long peace was producing its inevitable results in a vast extension of commerce and a rise of manufactures in the towns of the West Riding of Yorkshire. Fresh land was being brought into cultivation, and a great scheme was set on foot for reclaiming the fens. The new wealth of the country gentry, through the increase of rent, was seen in the splendour of the houses which they were raising.

XIX.—YEARS 1646 TO 1660.

(a). All chance of setting up Presbyteries throughout the country hung, however, on the disbanding of the New Model, and the New Model showed no will to disband itself. Its new attitude can only be fairly judged by remembering what the conquerors of Naseby really were. They were soldiers of a different class and of a different temper from the soldiers of any other army that the world has seen. Their ranks were filled for the most part with young farmers and tradesmen of the lower sort, maintaining themselves, for their pay was twelve months in arrear, mainly at their own cost. They had been specially picked as "honest" or religious men; and whatever enthusiasm or fanaticism they may have shown, their very enemies acknowledged the order and piety of their camp. They looked on themselves, not as swordsmen to be caught up and flung away at the will of a paymaster, but as men who had left farm and merchandise at a direct call from God. A great work had been given them to do, and the call bound them till it was done. Kingcraft, as Charles was hoping, might yet restore tyranny to the throne. * * They would wait before disbanding till these liberties were secured, and if need came they would again act to secure them. But their resolve sprang from no pride in the brute force of the sword they wielded. On the contrary, as they pleaded passionately at the bar of the Commons, "on becoming soldiers we have not ceased to be citizens." Their aims and proposals throughout were purely those of citizens, and of citizens who were ready, the moment their aim was won, to return peacefully to their homes. * *

(b). In his progress to the capital, Charles II passed in review the soldiers assembled on Blackheath. Betrayed by their general, abandoned by their leader, surrounded as they were by a nation in arms, the gloomy silence of their ranks awed even the careless king with a sense of danger. But none of the victories of the New Model were so glorious as the victory which it won over itself. Quietly, and without a struggle, as men who bowed to the inscrutable will of God, the farmers and traders who had dashed Rupert's chivalry to pieces on Naseby field, who had scattered at Worcester the "army of the aliens," and driven into helpless flight the sovereign that now came to enjoy his own again," who had renewed beyond sea the glories of Cressy and Agincourt, had mastered the Parliament, had brought a king to justice and the block, had given laws to England, and held even Cromwell in awe, became farmers and tradesmen again, and were known among their fellow-men by no other sign than their great soberness and industry. And with them, Puritanism laid down the sword. It ceased from the long attempt to build up a Kingdom of God by force and violence, and fell back on its truer work of building up a kingdom of righteousness in the hearts and consciences of men. It was from the moment of its seeming fall that its real victory began. As soon as the wild orgy of the Restoration was over, men began to see that nothing that was really worthy in the work of Puritanism had been undone. The revels of Whitehall, the scepticism and debauchery of courtiers, the corruption of Statesmen, left the mass of Englishmen what Puritanism had made them, serious, earnest, sober in life and conduct, firm in their love of Protestantism and of

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IRONSIDES
Para. 6, contd

freedom. In the Revolution of 1688 Puritanism did the work of civil liberty which it had failed to do in that of 1642. It wrought out through Wesley and the revival of the eighteenth century the work of religious reform which its earlier efforts had only thrown back for a hundred years. Slowly but steadily it introduced its own seriousness and purity into English society, English literature, English politics. The whole history of English progress since the Restoration, on its moral and spiritual side, has been the history of Puritanism.

XX.—1712 TO 1742—(QUEEN ANNE TO GEORGE II).

In 1724 the king could congratulate the country on its possession of "peace with all powers abroad, at home perfect tranquillity, plenty, and an uninterrupted enjoyment of all civil and religious rights." Population was growing fast. That of Manchester and Birmingham doubled in thirty years. The rise of manufactures was accompanied by a sudden rise of commerce, which was due mainly to the rapid development of our colonies. Liverpool, which owes its creation to the new trade with the west, spread up from a little country town into the third port in the kingdom. With peace and security, the value of land, and with it the rental of every country gentleman, tripled; while the introduction of winter roots, of artificial grasses, of the system of a rotation of crops, changed the whole character of agriculture, and spread wealth through the farming classes. The wealth around him never made Walpole swerve from a rigid economy, from the steady reduction of the debt, or the diminution of fiscal duties. Even before the death of George the First, the public burdens were reduced by twenty millions. * *

The unpopularity of the Excise remained unabated, and even philosophers like Locke contended that the whole public revenue should be drawn from direct taxes upon the land. Walpole, on the other hand, saw in the growth of indirect taxation a means of freeing the land from all burdens whatever.

XXI.—YEARS 1742 TO 1760—(GEORGE II).

There was no doubt a revolt against religion and against churches in both the extremes of English society. In the higher circles "every one laughs," said Montesquieu on his visit to England, "if one talks of religion." Of the prominent statesmen of the time, the greater part were unbelievers in any form of Christianity, and distinguished for the grossness and immorality of their lives. * * Purity and fidelity to the marriage vow was sneered out of fashion. * * At the other end of the social scale lay the masses of the poor. They were ignorant and brutal to a degree which it is hard to conceive, for the vast increase of population which followed on the growth of towns and the development of manufactures had been met by no effort for their religious or educational improvement. Not a new parish had been created. Hardly a single new church had been built. Schools there were none, save the grammar schools of Edward and Elizabeth. The rural peasantry, who were fast being reduced to pauperism by the abuse of the poor laws, were

(6). The same energy was seen in the agricultural change which passed gradually over the country. Between the first and the last years of the eighteenth century a fourth part of England was reclaimed from waste and brought under tillage. At the Revolution of 1688 more than half the kingdom was believed to consist of moorland and forest and fen; and vast commons and wastes covered the greater part of England north of the Humber. But the numerous enclosure Bills which began with the reign of George II, and especially marked that of his successor, changed the whole face of the country. Ten thousand square miles of untilled land have been added under their operation to the area of cultivation; while in the tilled land itself the production had been more than doubled by the advance of agriculture, which began with the travels and treatises of Arthur Young, the introduction of the system of large farms by Mr. Coke of Norfolk, and the development of scientific tillage in the valleys of Lothian.

XXIII.—YEARS 1793 TO 1815—(GEORGE III).

(a). The increase of wealth was indeed enormous. England was sole mistress of the seas. The war had given her possession of the colonies of Spain, of Holland, and of France; and if her trade was checked for a time by the Berlin decrees, the efforts of Napoleon were soon rendered fruitless by the vast smuggling system which sprang up along the coast of North Germany. In spite of the far more serious blow which commerce received from the quarrel with America, English exports nearly doubled in the last fifteen years of the war. Manufactures profited by the great discoveries of Watt and Arkwright, and the consumption of raw cotton in the mills of Lancashire rose during the same period from fifty to a hundred millions of pounds. The vast accumulation of capital, as well as the constant recurrence of bad seasons at this time, told upon the land, and forced agriculture into a feverish and unhealthy prosperity. Wheat rose to famine prices, and the value of land rose in proportion with the price of wheat. Inclosures went on with prodigious rapidity; the income of every land-owner was doubled, while the farmers were able to introduce improvements into the processes of agriculture which changed the whole face of the country.

(6). But if the increase of wealth was enormous, its distribution was partial. During the fifteen years which preceded Waterloo, the number of the population rose from ten to thirteen millions, and this rapid increase kept down the rate of wages, which would naturally have advanced in a corresponding degree with the increase in the national wealth. Even manufactures, though destined in the long run to benefit the labouring classes, seemed at first rather to depress them. One of the earliest results of the introduction of machinery was the ruin of a number of small trades which were carried on at home, and the pauperisation of families who relied on them for support. In the winter of 1811 the terrible pressure of this transition from handicraft to machinery was seen in the Luddite, or machine-breaking, riots which broke out over the northern and midland counties, and which were only suppressed by military force. While labour was thus thrown out of its olden grooves, and the rate of wages kept down at an artificially low figure by the rapid

increase of population, the rise in the price of wheat, which brought wealth to the land-owner and the farmer, brought famine and death to the poor, for England was cut off by the war from the vast corn-fields of the Continent or of America, which now-a-days redress from their abundance, the results of a bad harvest. Scarcity was followed by a terrible pauperisation of the labouring classes. The amount of the poor-rate rose 50 per cent., and with the increase of poverty followed its inevitable result the increase of crime.

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XXIV.—YEARS 1815 TO 1873.

The peace which closed the great war with Napoleon left Britain feverish and exhausted. * * The pressure of the heavy taxation, and of the debts which now reached eight hundred millions, was embittered by the general distress of the country. The rapid development of English industry for a time ran ahead of the world's demands; the markets at home and abroad were glutted with unsaleable goods, and mills and manufactories were brought to a standstill. The scarcity caused by a series of bad harvests was intensified by the selfish legislation of the land-owners in Parliament. Conscious that the prosperity of English agriculture was merely factitious, and rested on the high price of corn produced by the war, they prohibited by an Act passed in 1815 the introduction of foreign corn till wheat had reached famine prices. Society, too, was disturbed by the great changes of employment consequent on a sudden return to peace after twenty years of war, and by the disbanding of the immense forces employed at sea and on land. The movement against machinery, which had been put down in 1812, revived in the formidable riots of the Luddites, and the distress of the rural poor brought about a rapid increase of crime.

7. Down to the wars of the Roses the rights of freemen were conjoined with the possession of land in fee-simple or in copyhold, in town and village. After that period there grew up a class of labourers who obtained freedom at the price of severance from the land. For a time the ravages of the plague created a demand for their labour; then a rise in the price of wool, and the consequent abandonment of much tillage, for pasturage lessened the demand; until the growth of woollen manufactures, and later, of other industries, caused migration of rural labourers to towns. In the agricultural districts also there sprang up, towards the close of the last century and in the beginning of the present, a demand for labour from the extension of tillage on the large farm system which was brought about by the high price of corn, and the inclosure of commons by landed proprietors. The stimulus of a high price of corn continued for some time after the repeal of the corn laws; but from a rise in the price of meat the land under tillage has again receded, and that under pasturage has increased, a result that will be aggravated by

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the very considerable fall in the price of wheat which has lately supervened, and which is still in progress. As more land is being devoted to pasturage, the demand for agricultural labour is reduced. At the same time the prosperity of the pasture lands depends on the prosperity of the manufacturing industries in towns, now threatened by the decreasing dependence of foreign countries on British manufactures. The changes which in the slow course of centuries have reduced the labourer to this precarious condition, have destroyed to a great extent the class of peasant-proprietors; the yeomanry are extinct. During those same centuries the lower middle class, including yeomen and peasant-proprietor, exerted more effectually than any other class a healthful, energising, renovating influence on the liberties, the moral condition, and the religious life of the English people.

PROFESSOR
CLIFFE LESLIE.

8. The following extracts are from Professor T. E. Cliffe Leslie's *Land Systems and Industrial Economy of Ireland, England, and Continental Countries*:—

Decline of the
rural population,
now the thinnest
and most joyless
peasantry in the
civilised world.

I. (a). Paradoxical as it may be, especially in contrast with the progress of England in trade and manufactures, and the progressive rise of the cultivators of the soil in all other civilised countries, from the Southern States of America to Russia, it is strictly true that the condition of the English rural population in every grade below the landed gentry has retrograded; and, in fact, there is no longer a true rural population remaining for the ends, political, social, and economic, which such a population ought to fulfil. The grounds of the assertion are well known to students of our social history; but it is necessary to a sufficient presentment of the state of the land question to show what they are.

(b). The different grades which are still sometimes, in unconscious irony, spoken of as the landed interest, once had a common interest in the land; an unbroken connection both with the soil and with each other subsisted between the landed gentry, the yeomanry who farmed their own estate, the tenant-farmers, and the agricultural labourers. From the yeomanry who owned land downwards, moreover, each of the rural grades had risen politically, economically, and socially; and there was for the members of each a prospect of a higher personal elevation and a larger interest in the soil. Now the landed yeomanry, insignificant in number, and a nullity in political power, are steadily disappearing altogether; the tenant-farmers have lost the security of tenure, the political independence, and the prospect of one day farming their own estate, which they formerly enjoyed; and lastly, the inferior peasantry not only have lost ground in the literal sense, and have rarely any other connection with the soil than a pauper's claim, but have sunk deplorably in other economical aspects below their condition in former centuries. Thus a soil eminently adapted by natural gifts to sustain a numerous and flourishing rural population of every grade, has almost the thinnest and absolutely the most joyless peasantry in the civilised world, and its chief end, as

regards human beings, seems only to be a nursery of over-population and misery in cities.

(c). The landed yeomanry at the head of the triple agricultural class, once so numerous in England, were many of them the descendants of peasants who had held their land in villeinage, or by a yet more servile tenure; and in the sixteenth century, after villeinage had become extinct, we find their numbers in spite of a succession of adverse circumstances, still recruited from a humble rank, and themselves recruiting one above them. * *

"These," Lord Macaulay concludes—and the conclusion is important—were they that intimes past made all France afraid." The important and independent part which such small land-owners continued long to fill in both the social and political world, has attracted the notice of all historians. In the last quarter of the seventeenth century their number exceeded that of the tenant-farmers, amounting at the most moderate estimate "to not less than 160,000 proprietors, who with their families must have made more than a seventh of the whole population." How great a change in the English polity is made by the gradual disappearance and political annihilation of this ancient order, and the absorption of their territorial influence and representation along with their estates by a higher class, must strike any reader of the passage in which Lord Macaulay briefly points their former place in constitutional history. "A large portion of the yeomanry had from the Reformation leaned towards Puritanism; had in the civil war taken the side of Parliament; had after the Reformation persisted in hearing Presbyterian and independent preachers; had at the elections strenuously supported the exclusionists; and had continued, even after the discovery of the Rye House Plot and the prescription of the whig leaders, to regard Popery and arbitrary power with unmitigated hostility." * * *

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CLIFFE LESLIE.

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Decline of the
yeomanry.

II. (a). England, says a distinguished Englishman on the Continent, referring particularly to the researches of a German economist, is the only Teutonic community—we believe we might say the only civilised community—in which the bulk of the land under cultivation is not in the hands of small proprietors; clearly, therefore, England represents the exception and not the rule. * *

Causes of dis-
appearance of
small properties.

1870—

• Briefly enumerated, the chief causes by which the peasantry—the really most important class—has been dispossessed of their ancient proprietary rights and beneficial interest in the soil are seven, of which four are the following:—

(1). Confiscation of their ancient rights of common, which were not only in themselves of great value, but most important for the help they gave towards the maintenance of their separate lands.

(2). Confiscation to a large extent of their separate lands themselves, by a long course of violence, fraud, and chicane, in addition to forfeitures resulting from deprivation of their rights of common.

(3). The destruction of country towns and villages, and the loss in consequence of local markets for the produce of peasant farms and gardens.

(4). The administration by the great land-owners of their own estates in such a manner as to impoverish the peasantry still further, and to sever their last remaining connection with the soil.

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Inclosure of
commons ruined
peasant pro-
prietors.

(b). These different causes have necessarily been mentioned in succession, but in reality they have often operated simultaneously. The one first stated was the first, however, to operate on an extensive scale. * * Some centuries ago the greater part of England was still uninclosed, and to a large extent subject to common use; the lord of the manor being himself a co-partner, as it were, both in the system of husbandry followed on the arable land and in the pastoral, and wood rights enjoyed in common. * * Taken together, the common and "commonable" rights constituted no small part of the villager's means of living, enabling him to keep no less than forty sheep, besides as many cows as he had winter food for. * * Mr. Morier pertinently remarks that the inclosures of the sixteenth century are usually spoken of as though denoting merely the conversion of arable into pasturage, and the consolidation of farms, without reference to the primary fact which governs the two, viz., the inclosure, not of arable land as such, but of *commonable* arable land. * * The peasantry lost not only the benefits derived from rights of commons over the greater part of England, but that loss, in numerous cases, entailed the loss of their separate fields. They had lived on the produce of the two, and their husbandry was based on it. They were the more unequal to the augmented rents and fines demanded of them that they had lost the sustenance of their stock. * * This was not all. The small proprietor, the freehold tenant, the copyholder, and the tenant for years, were ejected from their own fields as they had been from their commons. * * Mr. Morier sums up the dealings of the great proprietors with the villagers' fields (with which their own lands lay mixed under the ancient system of common husbandry) as follows:—

(c). In the most favourable cases, the withdrawal of one-third or one-half of the land from the "commonable" arable land of a township, such half or third portion consisting in many cases of small parcels intermixed with those of the commoners, must have rendered the further common cultivation impossible, and thereby compelled the freeholders and copyholders to part with their land and their common rights on any terms. That in less favourable cases the lords of the manor did not look very closely into the rights of their tenants, and that instead of an equitable repartition of land between the two classes, the result was a general consolidation of tenants' land with demesne land, the creation of large enclosed farms, with the consequent wholesale destruction of agricultural communities or townships, is well known to every reader of history. * *

1867—

Every grade of
the rural popu-
lation has sunk.

III. Thus every grade of the rural population has sunk: the landed yeomanry are almost gone; the tenant-farmers have lost their ancient independence and interest in the soil; the labourers have lost their separate cottages and plots of ground and their share in a common fund of land; and whereas all these grades were once rising, the prospect of the landed yeomanry is now one of total extinction; that of the tenant-farmers increasing insecurity; that of the agricultural labourer, to find the distance between his own grade and the one above him wider and more impassable than ever, while the condition of his own grade is scarcely above that of the brutes. Once, from the meanest peasant to the greatest noble, all had land, and he who had least might hope for

more; now, there is being taken away from him who has little even that which he has, his cottage, nay his separate room. Once there was an ascending movement from the lowest grade towards the highest, now there is a descending movement in every grade below the highest. * * The very steps by which the villein rose, as Sir James Shuttleworth describes them, are now lost to the peasantry of England. "Our ancient Saxon polity had a representative constitution in which the villein gradually rose to participate, and that just in proportion as he was admitted to the possession of property independently of the lord of the soil. The gradual transition from the occupation of land by villeinage to the cultivation of loan land, and the freedom of the tenant to migrate, to carry with him his acquisition, and to acquire land as a personal possession, are the chief steps of advance of the small class of villeins to the class of small tenant-farmers, and to the establishment of the independent class of yeomen and "statesmen" who cultivated their own land. Only one of these steps can now be said to remain—the freedom to migrate; and the consequence is a forced and unnatural migration from the country to a few great manufacturing towns and the metropolis, largely swollen by other circumstances (also connected with our territorial system) which limit to a few centres the space for manufactures and urban employments. * *

IV. "The sub-division of land increases the gross no less than the net produce. In general, the smaller the farm, the greater the produce of the soil. Cultivators and proprietors alike rejoice in the sub-division; the former, because it places more land within their reach, the latter, because it doubles their rents." When to this we add the consideration that the farm produce for which England is best suited requires, as Mr. Caird states, an immensity of labour, and that, as Mr. Thornton expresses it, "English agriculture would be exceedingly benefited by the application to it of at least double the actual quantity of labour," we may pronounce that England is fitted by nature to support an immense rural population in comfort; that landlords in clearing their estates of the labourers' little farms and cottages to diminish pauperism, have fallen into the common error of mistaking the prevention for the disease; that the immense migration from the country to the city has been a forced and unnatural movement; and that the misery and decline of the English rural population is the result of a system adverse to the interests of all classes, not excepting the proprietors of the soil. But the evils of the system do not end here. As it has cramped and misdirected the industry of the country, so has it the industry of the town; and the migration of the peasantry has been accompanied by another forced movement of the population to a few great cities, to which urban industry has been in a great measure unnaturally restricted. The result is, that enormously disproportionate numbers are huddled together in a space which yearly becomes less as those numbers increase; that the town population, like that of the country, has yearly less room for its growth; that the mass of the labouring population is degenerating both in country and in town, and that a land question has arisen in our cities, more imperatively demanding solution than even the land question in the country. * *

V. (a). The whole population of England doubles in about fifty-two years; but the chief increase is in the large towns, and most of all in the

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PROPOSITION
OF THE
FARM, &c., contd.

Yet England is
fitted by nature
to support an
immense rural
population in
comfort.

APP.
XXVIII.PROFESSOR
CLIFFE LESLIE.

Para. 8, contd.

Population de-
generating both
in town and
country.

metropolis, where most of all the space for human habitation rapidly decreases. We are thus coming to a deadlock both in country and in town, for want of bare room for the people to live in, while there is land enough and to spare. Already the population is degenerating both in town and country. The barrister threading the crowded lanes and courts between the Strand and Lincoln's Inn has noticed year by year the signs of a degenerating race upon old and young; and now they, too, have been displaced to swell the numbers in some more crowded and more squalid haunts. In the country, the degeneracy of the race is its most striking feature; intelligence is almost extinct among the rural poor; and in no other civilised land, and even in few savage lands, has any class of human being a look so cheerless, so unreasoning, so little human as the English agricultural labourer, without the light either of intelligence or of animal spirits on his sullen face.

Middle classes
injured.

(b). But the working classes are not the only sufferers. Already the dwellings of the middle classes in great cities not only are becoming dear beyond their means, but are beginning to disappear altogether; and they too will find before long that there is no room for them in either country or town, and that they have before them only the hard choice of the ancient Britons.

And a higher
class endan-
gered.

(c). And the danger threatens a higher class still. A landless and houseless population will ere long be brought face to face with a few thousand engrossers of the soil, who seldom can sell or divide it, or make adequate leases of it if they would, but who will be charged with the consequence, with making "pleasure-ground" as the *Times* recently called it, of all the land in the kingdom, while the nation has not enough for bare existence.

(d). Nor does the danger beset all classes only from within. We are coming closer year by year to both Europe and America; and if we are to hold a place, not to say as a great, but even as a small independent state, we must find room for the nation to grow, and to grow in health and strength; we must find room for increasing numbers of men to live as men, and not as rats.

Not the least
portentous
change is the
growing sever-
ance of the
peasantry from
the soil.

VI. (a). Not the least portentous among the changes in the classes which constitute the landed interest in England, is that growing severance of the peasantry from the soil, and that increasingly selfish and exclusive use of dominion over it by its proprietors, of which M. de Tocqueville speaks as follows: "An aristocracy does not die like a man in a day. Long before open war has broken out against it, the bond which had united the higher classes with the lower is seen to loosen by degrees; the relations between the rich and the poor become fewer and less kindly; rents rise. This is not actually the result of democratic revolution, but it is its certain indication. For an aristocracy which has definitively let the heart of the people slip from its hands, is like a tree which is dead at its roots, and which the winds overturn the more easily the higher it is. I have often heard great English proprietors congratulate themselves that they derive much more money from their estates than their fathers did. They may be in the right to rejoice, but assuredly they do not know at what they rejoice. They imagine they are making a net profit, when they are only making an exchange. What they gain in money they are on the point of losing in power.

(b). There is yet another sign that a great democratic movement is being accomplished or is in preparation. In the middle age almost all landed property was let in perpetuity, or at least for a very long term. When one studies the economy of that period, one finds that leases for ninety years were commoner than leases for twelve years are now. In his celebrated essay on M. de Tocqueville's book, Mr. Mill has, with similar prescience, remarked that without a large agricultural class, with an attachment to the soil, a permanent connection with it, and the tranquillity and simplicity of rural habits and tastes, there can be no check to the total predominance of an unsettled, uneasy, gain-seeking, commercial democracy. "Our town population," it has long been remarked, "is becoming almost as mobile and uneasy as the American. It ought not to be so with our agriculturists; they ought to be the counterbalancing element in the national character; they should represent the type opposite to the commercial, that of moderate wishes, tranquil tastes, and cultivation of the enjoyments compatible with the existing position. To attain this object, how much alteration may be requisite in the system of rack-renting and tenancy-at-will we cannot undertake to show in this place." So, in a late debate upon Irish tenures in Parliament, it was argued with unanswerable force by Mr. Gregory, in reference to the tenure now generally prevalent in the island: "There could be no attachment to the institutions of a country in which the whole of a peasantry existed merely on sufferance; certainly there was nothing conservative in tenancies-at-will; indeed, he believed such tenancies to be the most revolutionary in the world." The conclusion is irresistible that the true revolutionary party in Ireland are unconsciously and unwillingly, but not the less certainly, the owners of land.

9. The next extract will be from Mr. John Macdonell's work on the Land Question with particular reference to England and Scotland.

I. (a). There were, moreover, other benefits of a more palpable character, which have been lost. Before the commons were parcelled out, there existed potent and well understood checks on the over-growth of population; most of the rural poor were then proprietors, not, indeed, of the *directum dominium*, but of a substantial *usus*. The truth is too often forgotten. How rarely is it recollected that it is only in very modern times that England came to be peopled by persons wholly devoid of proprietorial rights! Our present condition is chiefly the work of the eighteenth and nineteenth centuries. Our present artificial state—artificial whether Lord Derby or Mr. Bright is right as to the number of land-owners,—is most modern. Long after the destruction of the bulk of our yeomen, and the diminution of small holdings during the French wars, the mass of the people were to all intents and purposes proprietors. If they did not own the entire *dominium*, neither did the lord of the manor. If they were not the owners of the fee-simple, still they were possessed of some claims over the land. The pertinent circumstance is, that far into the eighteenth century and into this century England was inhabited by persons who, whether free-holders or copy-holders, or cottiers, or residents in towns possessing rights of common, owned proprietorial rights over the soil, and that the present homeless character

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MR. JOHN
MACDONELL.

PARA. 9.

There can be no attachment to the institutions of a country in which the whole of a peasantry exist on sufferance.

MR. JOHN
MACDONELL.

The present homeless character of the bulk of the people came to pass within living memory.

reduce the number of persons exercising privileges over, and drawing reveuues from, the soil, without discharging functions of commensurate value. The usufructuary and the fructifier tend to be the same. * * Very many curious, complicated, and onerous, are the tenures which we find in old English law; and their conversion into common socage tenures produced great good in the realm. Blackstone puts the effects before those of Magna Charta itself; so much was done to strip the tree of the parasitical growth around it. In the history of villeinage, we have, perhaps, a chapter of the same tale. In the villein, it is commonly alleged, though with doubtful accuracy, that we have the predecessor of the copy-holder, whose tenure originally "base," and with all the incidents of baseness attaching to it, was in course of time transformed into a tenure differing little in point of value from that of the free-holder. We know that all of these villeins were not manumitted without a struggle. "We will that ye make us free for ever; ourselves, our heirs, and our lands; and that we be called no more bond, or so reputed." These were the dignified terms in which the peasants in 1382 made their demands. They were cajoled by empty, false promises. No sooner were they rendered impotent by deceit, than the promises which they had received were recalled. There was another chapter of this history completed when tithes were commuted. Though these still remain as a charge on the land, they do not any longer directly touch the cultivator. He no longer only partially gathers the fruits of his labour.

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PALL MALL
BUDGET.

Para. 10.

10. "PALL MALL BUDGET" (1879).

An eminent and original French economist, M. Maurice Bloch, has commented on the change which in fifty years or a century has occurred in the distribution of population in all civilized countries. M. Bloch's ideal of a happily circumstanced community is one in which there is a due proportion between the part of the population collected in towns and occupied in manufacturing industry, and the part engaged in agriculture. In such a state the growth of industrial activity and prosperity would pretty fairly keep pace with an increase of agricultural production. But the two striking phenomena which have characterized the last half-century have been, first, the enormous augmentation in some countries of the number of men and women inhabiting them; and in all countries (not even excepting the United States), the growing tendency of both the old and the new population to flock into cities and towns.

The growing tendency of both old and new populations to dis sever from the land and flock into cities and towns.

These urban populations are generally much too numerous for the food-producing powers of the rest of the country to support, and they are practically occupied in manufacturing articles of use and luxury to be sold for corn and meat to the communities which are still possessed of surplus soil. The result is a prodigious complication of the economical mechanism by which the inhabitants of towns are fed and kept alive. It is a mechanism which extends over the whole world, barbarous as well as civilised. The maker of calicoes has not the smallest means of knowing for what class of customers the wares in which he labours are ultimately destined. * * Conversely, the loaf eaten by the Sheffield weaver may come from any corner of the world. * * Thus it is that

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PALL MALL
BUDGET.

Para. 10, contd.

With great
land-owners the
people of Eng-
land will be a
town-bred
people, unfit to
defend the coun-
try; and the
country will be
the luxury of the
rich.

a great part of the population of Western Europe sells the produce of its labour to the whole world, and sweeps together its food from the whole world.

11. MR. J. A. FROUDE—(*January 1870*).

I. For a certain class of people—for the great land-owners, the great merchants, great bankers, great shop-keepers, great manufacturers, whose business is to make money, whose whole thoughts are set on making money and enjoying the luxuries which money can command—no doubt it would be a very fine world. Those who are now rich would grow richer; wealth, in the modern sense of it, would be enormously increased; suburban palaces would multiply, and conservatories and gardens, and farther off the parks and pleasant preserves. Land would continue to rise in value, and become more and more the privilege of those who could afford the luxury of owning it. From those classes we hear already a protest against emigration. * *

II. But these classes, powerful though they may be, and in Parliament a great deal too powerful, are not the people of England. They are not a twentieth, they are not a hundredth, part of it; and what sort of future is it to which, under the present hypotheses, the ninety-nine are to look forward? The greatness of a nation depends upon the men whom it can breed and rear. The prosperity of it depends upon its strength; and if men are sacrificed to money, the money will not be long in following them. How is the further development of England along the road on which it has been travelling at such rate for the last twenty years likely to affect the great mass of the inhabitants of this island? We have conquered our present position, because the English are a race of unusual vigour, both of body and mind,—industrious, energetic, ingenious, capable of great muscular exertion, and remarkable along with it for equally great personal courage. If we are to preserve our place, we must preserve the qualities which won it. Without them all the gold in the planet will not save us. Gold will remain only with those who are strong enough to hold it; and unless these qualities depend on conditions which cannot be calculated, and which therefore need not be considered, the statesman who attends only to what he calls the production of wealth, forgets the most important half of the problem which he has to solve.

III. Under the conditions which I have supposed, England would become, still more than it is at present, a country of enormous cities. The industry on which its prosperity is dependent can only be carried on where large masses of people are congregated together, and the tendency already visible towards a diminution of the agricultural population would become increasingly active. Large estates are fast devouring small properties; large farms, small farms; and this process will continue. Machinery will supersede human hands. Cattle breeding, as causing less expenditure in wages, will drive out tillage. A single herdsman or a single engineer will take the place of ten or twenty of the old farm labourers. Land will rise in value. Such labourers as remain may be better paid. Such as are forced into the towns may earn five shillings where they now earn three; but as a class, the village population will dwindle away.

and afterwards the Low Countries, had their periods of commercial splendour. But their greatness was founded on sand. They had wealth, but they had no rank and file of country-bred men to fall back upon, and they sank as they had risen. In the American civil war the enthusiastic clerks and shop-boys from the eastern cities were blown in pieces by the Virginian riflemen. Had there been no western farmers to fight the south with men of their own sort, and better than themselves, the star banner of the Confederacy would still be flying over Richmond. The life of cities brings with it certain physical consequences, for which no antidote and no preventive has yet been discovered. When vast numbers of people are crowded together, the air they breathe becomes impure, the water polluted. The hours of work are unhealthy; occupation passed largely within doors thins the blood and wastes the muscles, and creates a craving for drink, which re-acts again as poison. The town child rarely sees the sunshine; and light, it is well known, is one of the chief feeders of life. What is worse, he rarely or never tastes fresh milk or butter, or even bread which is unbewitched. The Bolton operative may live as long as his brother on the moors, but though bred originally perhaps in the same country home, he has not the same bone and stature, and the contrast between the children and grandchildren will be increasingly marked. Any one who cares to observe a gathering of operatives in Leeds or Bradford, and will walk afterwards through Beverley on a market day, will see two groups which, comparing man to man, are like pigmies beside giants. A hundred labourers from the wolds would be a match for a thousand weavers. The tailor confined to his shop-board has been called the ninth part of a man. There is nothing special in the tailor's work so to fractionize him beyond other indoor trades. We shall be breeding up a nation of tailors. In the great engine factories and iron works we see large sinewy men, but they are invariably country-born. Their children dwindle as if a blight was on them. Artisans and operatives of all sorts who work in confinement are so exhausted at the end of their day's labour, that the temptations of the drink-shop are irresistible. As towns grow, drunkenness grows, and with drunkenness come diminished stamina and physical decrepitude. * * And besides drunkenness there are other diseases, and other diseases, not peculiar to towns perhaps, but especially common and deadly there, which tend equally to corrupt the blood and ruin

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MR. J. A.
FROUDE.

Para. 11, contd.

the constitution. Every great city becomes a moral cesspool, into which profligacy has a tendency to draw, and where, being shut out from light, it is amenable to no control. * * Disease and demoralization go hand in hand, undermining and debilitating the physical strength, and over-civilisation creates in its own breast the sores which will one day kill it. A growth of population we must have to keep pace with the nations round us, and unless we can breed up part of our people in occupations more healthy for mind or body than can be found in the coal-pit and the workshop; unless we preserve in sufficient numbers the purity and vigour of our race, if we trust entirely to the expansion of towns, we are sacrificing to immediate and mean temptations the stability of the empire which we have inherited. If we are to take hostages of the future we require an agricultural population independent of and beside the towns. * *

V. Thus the sweeping brush has been applied to the statute-book and the complicated provisions established by our ancestors, for our minds and bodies have been either cleared away, or at least neutralised, by the absence of machinery to make them effective. * * Property in land, once peculiarly the object of legislative supervision, is left to economic law. The Parliaments of the Tudors, considering in their way the greatest happiness of the greatest number, charged themselves with the distribution of the produce of the soil. They encouraged the multiplication of yeomen and peasant-proprietors. They attached four acres of land to every poor man's cottage. They prohibited the enclosures of commons and the agglomeration of farms; and by reducing the power of the landlords to do as they would with their own, they corrected the tendency which is now unresisted towards the absorption of the land in a diminishing number of hands. The modern theory is, that the greater the interest of the landlord in his property, the more he is encouraged to develop the resources of it.

small properties
absorbed in
large: land has
become a mere
investment of
capital.

VI. The country squire of the last century, whether he was a Squire Western or a Squire Allworthy, resided for the greater part of his life in the parish where he was born. The number of free-holders was four times what it is at present; plurality of estates was the exception; the owner of land, like the peasant, was virtually *ascriptus glebe*, a practical reality in the middle of the property committed to him. A London house was unthought of; a family trip to the Continent as unimaginable as an outing to the moon. * * In the present day, the great estates have swallowed up the small. The fat ears of corn have eaten up the lean. The same owner holds properties in a dozen counties. He cannot reside upon them all, or make personal acquaintance with his multiplied dependants. He has several country residences. He lives in London half the year, and most of the rest upon the Continent. Inevitably he comes to regard his land as an investment; his duty to it the development of its producing powers; the receipt of his rents the essence of the connection, and his personal interest in it the sport which it will provide for himself and his friends. Modern landlords frankly tell us that if the game laws are abolished, they will have lost the last temptation to visit their country seats. If this is their view of the matter, the sooner they sell their estates and pass them over to others to a whom life has not yet ceased to be serious, the better it will be

for the community. They complain of the growth of democracy and insubordination; the fault is wholly in themselves;—they have lost the respect of the people because they have ceased to deserve it. * * At the end of the sixteenth century an Act passed obliging the landlord to attach four acres of land to every cottage on his estate. The Act itself was an indication that the tide was on the turn. The English villein, like the serf all over Europe, had originally rights in the soil, which were only gradually stolen from him. The Statute of Elizabeth was a compromise reserving so much of the old privilege as appeared indispensable for a healthy life.

VII. The four acres shrivelled like what had gone before: but generations had to pass before they had dwindled to nothing, and the labourer was inclosed within his four walls to live upon his daily wages.

VIII. Similarly, in most country parishes there were tracts of common land, where every householder could have his flock of sheep, his cow or two, his geese or his pig; and milk and bacon so produced went into the limbs of his children, and went to form the large English bone and sinew which are now becoming things of tradition. The thicket or the peat bog provided fuel. There were spots where the soil was favourable, in which it was broken up for tillage, and the poor families in rotation raised a scanty crop there. It is true that the common land was wretchedly cultivated. What is every one's property is no one's property. * * An inclosed common taken in hand by a man of capital produces four, five, or six times what it produced before. But the landlord who enters on possession is the only gainer by the change. The cottagers made little out of it; but they made something, and that something to them was the difference between comfort and penury. The inclosed land required some small additional labour. A family or two was added to the population on the estate, but a family living at the lower level to which all had been reduced. The landlord's rent-roll shows a higher figure, or, it may be, he has only an additional pheasant preserve. The labouring poor have lost the faggot on their hearths, the milk for their children, the slice of meat at their own dinners.

IX. Even the appropriation of the commons has not been sufficient without closer farming. When the commons went, there was still the liberal margin of grass on either side of the parish roads, to give pickings to the hobbled sheep or donkey. The landlord, with the right of the strong, which no custom can resist, is now moving forward his fences, taking possession of these ribands of green, and growing solid crops upon them. The land is turned to better purpose. The national wealth in some inappreciable way is supposed to have increased, but the only visible benefit is to the lord of the soil, and appears in some added splendour to the furniture of his drawing-room.

12. Mr. James Caird's optimist views are in striking contrast to the warnings of the preceding writers—

MR. JAMES
CAIRD.

I.—MR. JAMES CAIRD (*English Agriculture in 1850-51*).

(1). (a). It appears that in a period of 80 years since 1770, the average rent of arable land has risen 100 per cent., the average produce of wheat per acre has increased 14 per cent., the labourer's wages 34 per cent., and

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CALDWELL.

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his cottage rent 100 per cent. ; while the price of bread, the great staple of the food of the English labourer, is about the same as it was in 1770. The price of butter has increased 100 per cent., meat about 70 per cent., and wool upwards of 100 per cent.

(b). The increase of 14 per cent. on the average yield of wheat per acre does not indicate the total increased produce. The extent of land in cultivation in 1770 was, without doubt, much less than it is now ; and the produce given then was the average of a higher quality of land, the best having, of course, been earliest taken into cultivation. The increase of acreable corn produce has therefore been obtained by better farming, notwithstanding the contrary influence arising from the employment of inferior sorts. The increased breadth now under wheat bears, however, no proportion to the increase of rent in the same period ; and the price of wheat now is much the same as it was then. We must therefore look to the returns from stock to explain the discrepancy.

(c). While wheat has not increased in price, butter, wheat, and wool, have nearly doubled in value. The quantity produced has also greatly increased, the same land now carrying larger cows, cattle which arrive at earlier maturity, and of greater size, and sheep of better weight and quality, and yielding more wool. On dairy farms, and on such as are adapted for the rearing and feeding of stock, especially of sheep stock, the value of the annual produce has kept pace with the increase of rent. With the corn farms the case is very different. In former times the strong clay lands were looked upon as the true wheat soils of the country. They paid the highest rent, the heaviest tithe, and employed the greatest number of labourers. But modern improvements have entirely changed their position. The extension of green crops and the feeding of stock have so raised the productive quality of the light lands, that they now produce corn at less cost than the clays, with the further important advantage that the stock maintained on them yields a large profit besides. In all parts of the country, accordingly, we have found the farmers of strong clays suffering the most severely under the recent depression of prices.

II.—RENT.

(a). The influence of proximity to large populations in enhancing the rent of land, varies in different parts of the country. The lowest rented counties in England are Surrey, Sussex, and Durham, two of which may be said to be in the vicinity of the metropolis, and the third has a large and well-employed population. The highest rented counties are Lancashire and the West Riding, many of which are continuous villages, and both contain a large proportion of grass land. In 1770, distance from the metropolis seems to have in a great measure regulated the rent, which begins, according to Arthur Young, at 19s. 6d. in Berkshire, and gradually falls to 7s. 6d. in Cumberland. But the means of communication in his time are described by him as "exccerable." * * Matters are changed now. We have railways traversing every part of the country, steam vessels sailing from almost every port, and generally good roads of accommodation between every village and market town.

(b). Rent, in so far as regulated by external circumstances, depends now on other influences than proximity to, or distance from, the metro-

polis. * * The great eorn-growing counties of the east coast are thus shown to yield an average rent of 23s. 8d. an acre; the more mixed husbandry of the midland counties, and the grazing green crop and dairy districts of the west, 31s. 5d. This striking difference, being not less than 30 per cent., is explained chiefly by the different value of their staple produce, as already shown; eorn, the staple of the east coast, selling at the same price as it did 80 years ago, while dairy produce, meat, and wool, have nearly doubled in value. The difference in rent does not arise from a greater fertility of soil, as may be seen by comparing the produce of wheat. The eorn counties, in so far as they yield barley and feed or produce cattle and sheep, benefit by the rise in price. * *

(c). That the large capitalist farmer of the east coast, possessing the most cheaply cultivated soil, and conducting his agricultural operations with the most skill, should not only pay the lowest rent, but be the loudest complainer under the depression of prices, is to be accounted for by his greater dependence on the value of eorn. The moistness of the climate of the west, on the other hand, discouraged eorn cultivation, and compelled a greater reliance on stock. And, as the country becomes more prosperous, the difference in the relative value of eorn and stock will gradually be increased. The production of vegetables and fresh meat, hay for forage, and pasture for dairy cattle, which were formerly confined to the neighbourhood of towns, will necessarily extend as the houses become more numerous and populous. The facilities of communication must increase this tendency. Our insular position, with a limited territory, and an increasingly dense manufacturing population, is yearly extending the circle within which the production of fresh food, animal, vegetable, and forage, will be needed for the daily and weekly supply of the inhabitants and their cattle, and which, both on account of its bulk, and the necessity of having it fresh, cannot be brought from distant countries. Fresh meat, milk, butter, vegetables, and hay, are articles of this description. They can be produced in no country so well as our own, both climate and soil being remarkably suited to them. * * Every intelligent farmer ought to keep this steadily in view; let him produce as much as he can of the articles which have shown a gradual tendency to increase in value. The farms which eighty years ago yielded £100 in meat and wool, or in butter, would now produce £200, although neither the breed of stock nor the capabilities of the land had been improved. Those which yielded £100 in wheat then, would yield no more now, even if the productive power of the land had undergone no diminution by a long course of exhaustion. * * The safe course for the English agriculturist is to endeavour, by increasing his live-stock, to render himself less dependent on eorn; while he at the same time enriches his farm by their manure, and is thus enabled to grow heavier crops at less comparative cost.

III.—LEASES.

Leases are the exception throughout England, and though we have found them more prevalent in the west, there has been no sufficient uniformity to account in any degree for the difference of rent.

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* * The tenantry in Stafford hold chiefly on yearly tenures, and prefer to do so, having the utmost confidence in the security of their possession, many farms having been for a long series of years in the same family. Several of the large landlords are ready to give leases, but the tenants do not desire them; they know that at each renewal of a lease their farms would be re-valued, and the rent increased,—a course which is very seldom taken with yearly tenants. * *

Yet the great proportion of English farms is held on yearly tenure, which may be terminated at any time by a six months' notice on either side. It is a system preferred by the landlord, as enabling him to retain a greater control over the land, and acquiesced in by the tenants, in consideration of easy rent.

Here we note that, in England, a yearly tenant has the advantage of a low rent, but without motive to improve or security for improvements; in Bengal, a yearly tenant is subject to a rack-rent which leaves him without means to improve if he were so inclined. Yet Sir Barnes Peacock measured English and Bengalee tenancies by the same rule.

IV.—ENCUMBERED ESTATES.

But there is one great barrier to improvement, which the present state of agriculture must force on the attention of the Legislature, the great extent to which landed property is encumbered. In every country where we found an estate more than usually neglected, the reason assigned was the inability of the proprietor to make improvements, on account of his incumbrances. We have not data by which to estimate with accuracy the proportion of land in each country in this position, but our information satisfies us that it is much greater than is generally supposed. Even where estates are not hopelessly embarrassed, landlords are often pinched by debt which they could clear off if they were enabled to sell a portion, or if that portion could be sold without the difficulties and expense which must now be submitted to.

V.—THE LABOURER.

(a). The disparity of wages paid for the same nominal amount of work in the various counties of England is so great as to show that there must be something in the present state of the law affecting the labourer, which prevents the wages of agricultural labour finding a more natural level throughout the country. Taking the highest rate we have met with, 15s. a week in parts of Lancashire, and comparing it with the lowest, 6s. a week in South Wilts, and considering the facilities of communication in the present day, it is surprising that so great a difference should continue. * *

(b). The higher wages of the northern counties is altogether due to the proximity of manufacturing and mining enterprise. The difference between the rates in the corn countries of the east and the mixed husbandry of the midland and western counties, is not so uniform as to warrant any deduction such as showed itself so distinctly in the average rent of those districts.

(c). The influence of manufacturing enterprise is thus seen to add 37 per cent. to the wages of the agricultural labourers of the northern counties, as compared with those of the south. The line is distinctly drawn at the point where coal ceases to be found, to the south of which there is only one of the counties we visited, in which the wages reach 10s. a week.

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(7). The local circumstances of that county explain the cause of labour being there better remunerated; the wealthy population of Brighton, and other places on the Sussex coast, affording an increased market for labour beyond the demands of agriculture. A comparison with the price of labour in the same counties in 1770 shows this influence clearly; the great increase of wages (66 to 100 per cent.) is in the northern counties, whilst the increase in the eighteen southern counties mentioned by Young is under 14 per cent.

* * Nothing could show more unequivocally the advantage of manufacturing enterprise to the property and advancement of the farm labourer.

* * In the manufacturing districts, agricultural rents and wages have kept pace with each other, while in the purely agricultural counties, the landlord's rents have increased 100 per cent., and the labourer's wages not quite 14. In the northern counties the labourers are enabled to feed and clothe themselves with respectability and comfort, while in some of the southern counties their wages are insufficient for their healthy sustenance.

13. MR. JAMES CAIRD (*The Landed Interest*, 1878).

I. (a). The distribution of landed property in England, so far as ownership is concerned, is, by the growing wealth of the country, constantly tending to a reduction in the number of small estates. This tendency is further promoted by the law which permits entails and settlements, thus hindering the natural sale of land so dealt with; and also by rights of primogeniture, which prevent sub-division of landed property among the family in case of intestacy. Cultivation thus passes out of the hands of small owners into those of tenant-farmers, causing a gradual decrease of the agricultural population, and a proportionate increase of the towns.

(b). This has been much accelerated by a policy of free trade, which has at once opened up the markets of the world for our commerce, and for the produce of our mines and manufactures. These are advantageously interchanged for the corn and other agricultural products of foreign lands. This will go on while the commerce is found mutually profitable. And it will be profitable so long as, by superior skill and enterprise, combined with exceptional mineral advantages, we can undersell other countries in the produce of our manufactories and mines, while they can supply us with corn at a cheaper rate than we can grow it at home. * *

(c). More than one-half of our corn is now of foreign growth, and nearly one-fourth of our meat and dairy produce; whilst year by year our corn-land is giving place to the more profitable produce afforded by the milk and grazing and market-garden farms which are g

extending their circle. Such produce renders the land more valuable; more tempting prices are offered for it to the small land-owners, and their numbers decrease. Wealthy men from the mines and manufactories and shipping and colonial interests, and the learned professions, desire to become proprietors of land; and some competition exists between them and those land-owners whose increasing wealth tempts them on suitable opportunities to enlarge the boundaries of their domains. Thus small proprietors are bought out, and agricultural land-owners diminish in number; while, side by side with them, vast urban populations are growing up, having little other connection with the land than that of affording the best market for its produce. * *

The buying up of small farms by men of capital enfeebled Rome and hastened her fall.

II. The population of England increases more rapidly than that of France, because our enormous foreign trade, amounting in value to £20 per head of our population, not wedded to the soil by property, emigrate to countries of the same language, at the rate of 100,000 a year, partly to the United States, and partly to our own colonies.

Our agriculture is no longer influenced by consideration of the means of finding employment for surplus labour, but is now being developed on the principle of obtaining the largest produce at the least cost, the same principle by which the power-loom has supplanted the hand-loom. In this process many ancient ties are loosened, and among them that adhesiveness to the soil which for generations has more bound the English labourer than the owner of the land to the parish of his birth,—the man of most ancient known descent being in many cases the labourer. The process is a wholesome one so long as the command to multiply and replenish the earth has not been fulfilled. And the general rise of wages among the labouring classes, both in town and country, with the diminution of pauperism, in the last five years, would seem to be a satisfactory proof that there is still room in this country, and no need to check the growth of population.

14. I. Mr. Caird's delight at the increasing income of land-owners makes him indifferent about the emigration from England of the more energetic and the ablest of her agricultural population.

(a). It has been well ascertained that during the last thirty years the agricultural population has diminished. The circumstances which have led to that continue in full strength. Increased facilities of locomotion between different parts of the country, and for emigration across the seas, tend more and more to carry off the energetic portion of the agricultural population.

(b). This has raised the rate of farm wages and the cost of cultivating arable land. The prosperity of the wage-earning class in other occupations has, at the same time, vastly increased the demand for butcher's meat and dairy produce, and so greatly increased the returns from grass land. The natural result is a gradual conversion of suitable arable land to grass, and this diminution of extent is accompanied also by the introduction of labour-saving machines.

(c). There is thus in both ways a tendency to diminution of our agricultural population,—the one operating in carrying off the ablest to more remunerative fields of industry, the other in lessening the home demand for agricultural labour.

(d). There has been, within the last twenty years, a very considerable increase in the value of land in this country. The improvement does not seem to have begun in England till 1858, the gross annual value of "Lands" in 1857 having been returned at £50,000 less in that year than in 1846. From 1858 the rise has been progressive and continuous, and with an average increase of £470,000 a year.

	England. £	Scotland. £	Ireland. £	TOTAL. £
Increase of gross annual value of land assessed for income tax, in 1875 compared with 1857 ...	8,948,000	1,561,000	546,000	11,055,000
Increase per cent. ...	21	26	6	
Capital value of increase at 30 years' purchase...	268,440,000	46,830,000	16,380,000	331,650,000

(e). This increase, as elsewhere explained, has arisen chiefly from the great advance in the consumption and value of meat and dairy produce.

(f). But though in the aggregate the land-owners of England have become richer by more than one-fifth, and those of Scotland by more than one-fourth, the progress has not been uniform. In the purely corn districts, and on the chalk and sands of the drier counties where grass does not thrive, the increase has been small. On the poor clays there has been none. It has been greatest in the grazing counties, and in the west and north.

II. The land-owner, notwithstanding his so greatly increased riches, has nothing to spare for an increased number of those labourers whose toil contributes to his wealth. The reward reserved for the labourers is to leave a country that is farther advanced than Continental Europe in that science of political economy which concerns itself with the distribution of wealth.

(a). In short, our system is that of large capitalists owning the land; of smaller capitalists, each cultivating five times more of it than they would have means to do if they owned their farms, and of labourers free to carry their labour to any market which they consider most remunerative. It has been the gradual growth of experience in a country of moderate extent, where land is all occupied, where capital is abundant and constantly seeking investment in land, and where other industries than agriculture are always demanding recruits from the children of the agricultural labourer, who find besides a ready outlet in those British colonies where the soil and climate are not much different from that which they leave, and where their own language is spoken. * * In the United States and in the vast Continent of Australia there is room enough to take, with advantage, the surplus population of every country in Europe for many generations. Instead of struggling at home as labourers, or cultivators

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of small patches of land, where nothing but the most sparing frugality enables them to live, the working men of all countries are invited and assisted by Australia to take a share on equal terms with our own people in the great enterprise of colonising a new Continent. * * A system is best tested by its fruits.

And that system which multiplies manifold the enormous wealth of land-owners, but which, yet,—with plenty of land untilled, and with England's national independence, made precarious by her growing dependence on foreign corn—has no kinder nor more cheering word for the agricultural labourer than that he should emigrate to Australia, is no doubt the best system.

(b). This country is becoming every ten years less and less of a farm, and more and more of a meadow, a garden, and a play-ground. The deer forest, and grouse, in the higher and wilder parts of the country, and the picturesque commons in the more populous districts, are already in many cases not only more attractive, but more remunerative in health and enjoyment than they probably would be if subjected to costly improvement by drainage, or by being broken up for cultivation. The poor clay soils which are expensive to cultivate, and meagre in yield, will be gradually all laid to grass, and the poorer soils of every kind, upon which the costs of cultivation bear a high proportion to the produce, will probably follow the same rule. During the last ten years the permanent pasture in Great Britain has, chiefly from this cause, been increased by more than one million acres.

Forgetful of history, unconscious that his account of the existing division of land in England reads like a plagiarism of an account of the aggregation of farms which destroyed the Roman Empire (Appendix XXX, para. 1, III), Mr. Caird looks very complacently on the conversion of arable land into pasturage, wherever the soil is not good enough for his craze of large farms and high farming. A greater authority, Arthur Young, wrote of poor soils and peasant-proprietors: "Give a man the secure possession of a bleak rock, and he will turn it into a garden; give him a nine years' lease of a garden, and he will convert it into a desert." But it is better that the country should become more and more of a meadow and a play-ground, than that the play-ground should be disfigured by the small farms of peasant-proprietors who could defend England from foreign foes in a way in which the rich land-owners cannot.

(c). It is worthy of note that the strictly rural parishes of England exhibit some decline of population. In one-fourth of the registration districts there has been a diminution of the agricultural population in the ten years ending 1871, amounting altogether to 108,000. And it is

quite certain that this continues. It arises from the natural draft to the better-paid labour of the mining, manufacturing, and other industrial countries, which are augmented both by this immigration and by natural increase. Diminished population in the rural districts is followed by a rise of wages, and this leads to greater economy of labour, both by the introduction of labour-saving machinery and the conversion of arable land to pasture, where the nature of the soil admits. The higher price of meat and dairy produce also contributes to this change. But the loss in numbers of the agricultural districts is amply made good by the gain in the rest of the country, the population now employed in agriculture being small compared with that of the other industries. Fifty years ago a fifth of the working population of England was engaged in agriculture. At the present time there is less than a tenth.

While the proportion of the agricultural population, or the strength and vigour of the nation, has diminished by one-half, nations on the Continent of Europe which bear England no good will have armed their sturdy peasant-proprietors by the million.

(d). On the other hand, the population is multiplying at the rate of 350,000 a year—nearly a thousand a day. Their consumption of food improves, not only in proportion to their increase in numbers, but also with the augmenting scale of wages. Twenty-five years ago the agricultural population rarely could afford to eat butcher's meat more than once a week. Some of them now have it every day; and as the condition of the rest of the people has improved in an equal degree, the increased consumption of food in this country has been prodigious. In addition to the whole of our home produce, we imported, in 1877, foreign food and corn of the value of one hundred millions sterling, two-thirds of which was in corn, and one-third live and dead meat. It has become a vast trade, embracing not only the nearer ports of Europe, but those of India, Australia, and America, which in corn has increased threefold, and in meat and provisions sixfold. If this goes on at the same progressive rate for the next twenty years, we shall have forty millions of people to feed, which will tax still more the resources of all those countries which have hitherto sent us their surplus, and can hardly fail to be attended by a considerable increase of the price of provisions.

It is assumed here that manufactures will flourish, though capital and machinery be sent abroad to countries which have raised a barrier of protective duties against England, and though the home market for manufactures will be contracted by the decrease of the agricultural population. Should, however, manufactures decline, the producers of meat will, like the producers of wheat, be advised by Mr. Caird to quit the country, leaving it to be defended by the fractional men congregated in cities (para. 11, section IV); and the people in other countries, whose food will be made dearer by the supplies to the fractional men in England, will not

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APP. take England's money by force, but will buy it with their
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(e). In regard to the future of the third-branch of the landed interests, the agricultural labourer, his prospects will now harmonize with the general prosperity of the country, and the standard of wages. There is no impediment in his way to move to a better field of employment in this country or abroad. Great encouragement is offered and cheap transit to agricultural labourers by several of the colonies.

The prosperity of the labourer is such that his brightest look-out in England is to leave the country.

15. TITHES.

Originally all the land in the country was titheable, except such as belonged to the crown and to the church itself. At the time of the Reformation, much of the church lands in this country passed into the hands of laymen, and continued exempt from tithe, and from various other causes a considerable proportion of the lands of the country has become exempted. As the country became more populous, and its demands upon the produce of the soil more difficult to meet, the payment of tithes in kind was found a great hindrance to improved agriculture, as men were naturally unwilling to expend capital for the purpose of increasing the produce, while others who ran no risk and bore no part of the toil, had a right to share in that increase. Forty years ago it was determined that this should cease, and it was enacted that, instead of payment in kind, tithes should be commuted into a payment in money, calculated on the average receipts of the preceding seven years, the annual money value to vary according to the annual price of corn on a septennial average, but the quantity of corn then ascertained to remain for ever as the tithes of the parish.

A very important change of principle here took place. Up to that time the income of the church increased with the increased value yielded by the land, the original object that the church should progress in material resources in equal proportion with the land being thus maintained. From 1836 that increment was stopped. Since that time the land rental of England has risen 50 per cent., and all that portion of the increase which previous to 1836 would have gone to the church has gone to the land-owners.

A tenth of that would not, however, by any means adequately represent the loss to the church and the gain to the land-owners, for the tithe in kind was the tenth of the gross produce, which was equal to much more than a tenth of the rent of arable land. In 1836 the money value of the tithe, as compared with the land rental, was as four millions sterling to thirty-three. In 1876 the tithe was still four millions, but the land rental had risen to fifty. If the old principle of participation had continued, the annual income of the church would now have been two millions greater than it is.

16. STATE LOANS.

A very large proportion of the land is held by tenants for life under strict settlement, a condition which prevents the power of sale, and it is also frequently burdened with payments to other members of the family, and in many cases with debt. The nominal income is thus often very much reduced, and the apparent owner of five thousand a year may have little more than half of it to spend. In such cases there is no capital available for the improvements which a land-owner is called upon to make, in order to keep his property abreast of the advance in agricultural practice. This was pressing felt at the time of the repeal of the Corn Laws, and the withdrawal of protective duties from native produce. Parliament, therefore, when it enacted a free import of the necessities of life, provided State loans on favourable terms to the land-owners for the drainage and reclamation of their estates. * *

The State loans were limited in Great Britain to drainage and reclamation, the land-owners being left to their own resources for buildings, roads, and fences. In Ireland these were and still are included, that country having always been favoured in matters of State assistance. The rate of payment was by annual instalments of $6\frac{1}{2}$ per cent., which in twenty-two years redeemed the principal, and at the same time paid the annual interest at $3\frac{1}{2}$ per cent.

The class of land-owners in the United Kingdom comprises a body of about 180,000, who possess among them the whole of the agricultural land from 10 acres upwards. The owners of less than 10 acres each hold not more than one-hundredth part of the land, and may here be regarded as householders only. The property of the land-owners, independent of minerals, yields an annual rent of 67 millions sterling, and is worth a capital value of 2,000 millions.

The tenant-farmers occupy farms of very various extent; 70 per cent. of them under 50 acres each, 12 per cent. between 50 and 100 acres, and 18 per cent. farms of more than 100 acres each, 5,000 occupy farms of between 500 and 1,000 acres, and 600 occupy farms exceeding 1,000 acres. Many of them are men of liberal education, and some of these are found in most parishes and in every county.

17. COPYHOLD.

A term in English law applied to lands held by what is called 'tenure by copy of court roll,' the nature of which is thus described by Littleton: "tenant by copy of court roll is as if a man be seized in a manor, within which manor there is a custom which hath been used time out of mind of man, that certain tenants within the same manor have used to have lands and tenements to hold to them and their heirs in fee-simple or fee-tail, or for term of life, at the will of the lord, according to the custom of the same manor. And such a tenant may not alien his land by deed, for then the lord may enter as into a thing forfeited unto him. But if he will alien his land to another, it behoveth him after the custom to surrender the tenements in court into the hands of the lord to the use of him that shall have the estate. And these tenants are called tenants by copy of court roll, because they have no other evidence concerning

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Standard Libr-
ary Cyclopædia.

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their tenements, but only the copies of court rolls." From this it appears that the title to copyhold lands is not only modified, but altogether constituted by custom; subject to the estates in them, which the custom confers, they are held by the lord under the common law as part of the demesnes of his manor. For these customary estates were in their origin mere tenancies-at-will, though by long usage they have in many instances acquired the character of a permanent inheritance, descendible (except where otherwise modified by custom) according to the rules of the common law, and as tenancies-at-will they continue to be considered in all questions relating to the *legal* as distinguished from the customary property in the land.

18. POOR LAWS.

Standard
Library
Cyclopedia.

(a). The Poor Laws are on the principle that impotent poor, or those who have no means of support and are physically incapable of supporting themselves, are entitled to support from a compulsory poor-rate; and that to able-bodied persons, or to their families, relief is to be given only within the walls of the workhouse. The assessment for the poor-rate is laid in respect of the revenue or annual profit of the property rated, whether real or personal. Such property, therefore, as is incapable of yielding profit, is not rateable.

(b). One of the abuses in the administration of the law is thus described—

The most mischievous practice was that which was established by the justices for the County of Berks, in the month of May 1875, when, in order to meet the wants of the labouring population caused by the high price of provisions, an allowance in proportion to the number of his family was made out of the parish fund to every labourer who applied for relief. This allowance fluctuated with the price of the gallon loaf of second flour, and the scale was so adjusted as to return to each family the sum which a given number of loaves would cost beyond the price in a year of ordinary abundance. * * Under this allowance system the labourer received a part of his means of subsistence in the form of a parish gift; and as the fund out of which it was provided was raised from the contributions of those who did not employ labourers, as well as of those who did, their employers, being able to burthen others with the payment for their labour, had a direct interest in perpetuating the system. Those who employed the labourers looked upon the parish contribution as part of the fund out of which they were to be paid, and accordingly they lowered their rate of wages. The labourers also looked on the parish fund as a source of wages independent of their labour wages. The consequence was that the labourer looked to the parish aid as a matter of right, without any regard to his real wants, and he received the wages of his labour as only one and a secondary source of the means of subsistence. His character as a labourer became of less value, and his value as a labourer was thus diminished under the

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IRELAND.

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1. IRELAND UNDER HENRY VIII.—*Green's Short History of the English people.*

But submission was far from being all that Henry desired. His aim was to civilise the people whom he had conquered; to rule, not by force, but by law. But the only conception of law which the king or his ministers could frame was that of English law. The customary law which prevailed without the Pale,¹ the native system of clan government and tenure of land by the tribe, as well as the poetry and literature which threw their lustre over the Irish tongue, were either unknown to the English statesmen or despised by them as barbarous. * * The chiefs were to be persuaded of the advantage of justice and legal rule. Their fear of any purpose to "expel them from their lands and dominions lawfully possessed" was to be dispelled by a promise "to conceive them as their own." * * Chieftain after chieftain was won over to the acceptance of the indenture which guaranteed him the possession of his lands, and left his authority over his tribesmen untouched on conditions of a pledge of loyalty, of abstinence from illegal wars and exactions on his fellow-subjects, and of rendering a fixed tribute and service in war time of the crown. * * The chieftain in fact profited greatly by the change. Not only were the lands of the suppressed abbeys granted to them on their assumption of their new titles, but the English law courts, ignoring the custom by which the land belonged to the tribe at large, regarded the chiefs as sole proprietors of the soil.

Lord Cornwallis made a mistake similar to that of the Irish Courts when he recognised the zemindars as proprietors of the soil.

2. IRISH LANDLORDS AND BENGAL ZEMINDARS (SIR G. CAMPBELL).

I. (a). It is hardly possible to approach the subject without first realising this, *viz.*, that in Ireland a landlord is not a landlord, and a tenant is not a tenant in the English sense. In fact this may be said of most countries. The whole difficulty arises from our applying English ideas and English laws to a country where they are opposed to facts, and to those "*αγραπτοι νομοι*" which are written in the hearts, and find expression in the customs of the people. * *

(b). Talk of the sacredness of landlord property as you will, it is quite impossible for any one to hear the common language of, and read the literature regarding, Ireland, without feeling that, law or no law, at this

¹ The districts of Drogheda, Dublin, Wexford, Waterford, and Cork, formed what was known as the English Pale.

moment (1869), the landlords are not the only owners of the soil. All classes talk freely, as a matter of course, of a man as 'owning a farm' 'having inherited a farm.' It is well known that the tenants habitually dispose of their farms by formal will, charge them with fortunes for daughters, and in every respect deal with them as property. Take the book of Mr. Trench, who, however friendly he may be to the people, is certainly not inclined to assist their rights of property against those of the landlords; we find him constantly, and as it were unconsciously, applying the language of property to the tenure of farms; it is, over and over again—a man owned a farm—did this with his farm—did that with his farm. * * Surely it is a mere superstition to talk as if it would be a sacrilege to acknowledge some sort of claim to a property which is already so fixed in the hearts and language of the people of Ireland, low and high. * *

(c). There can be no question that, as a rule, in Ireland it is the tenant, and not the landlord, who has reclaimed the land, built the homestead, put up the fences, and done most of what has been done. He has done this without special contract, in reliance on the custom. The exercise of the extreme legal right of the landlord to turn him out, without full compensation, is a confiscation in the reasonable sense of the word. Yet every attempt to interfere with this right of the landlord to ignore improvements already made has been met by the cry of confiscation on their side.

(d). The claim of the Irish is not to oust the landlords, but to hold under them at a fair rent. People would rather say, "admitting your title to what you have enjoyed, *viz.*, the rent, we claim that which we have enjoyed, *viz.*, the occupation of the land, paying the rent." It seems absurd to English ears that a man who has come in under a definite contract of a mereantile character as a tenant in the English sense, should claim any right to hold beyond the terms of his contract. But in these things we must particularly bear in mind what Mr. Maine has shown in his 'Ancient Law,' that in certain stages of society things depend rather on 'status' than on contract; that contract is a later system which is fully carried out only in very advanced societies. Especially as regards the tenure of land, it may be said that in very few countries has contract wholly prevailed over status. Indeed, Great Britain is almost the only country in the world in which land contract has been carried to the length of our three-fold division of classes into superior capitalist owning the land and supplying the fixed machinery necessary for its cultivation; inferior capitalist cultivating under a definite contract, and labourer working for hire. The system is different in Ireland; but so far from Ireland being in this respect a strange and abnormal country, the fact is that as the world now stands, it is we who are abnormal, and the Irish system is that which is more general; we may, therefore, well judge it tolerantly if not respectfully.

(e). When we go back to old accounts, the similarity of Irish tenures and Irish history to Indian tenures and history, is very remarkable. The surrenders of the Irish tenures of the rebel chiefs, and the re-grants upon English titles which took place in Ireland, are exactly analogous to what has since taken place in Oudh. A little later we have in Sir John Davies' paper an account of the only regular and thorough settlement of Ireland

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which has been made, under that insufficiently appreciated monarch, James I. * * Davies found exactly the same land question which in India so much puzzled Lord Cornwallis and others accustomed to English ideas. He fully explains how the chiefs and tanists—zemindars and talookdars, we might say—though treated in the English grants as proprietors, were not really so in the full English sense of the word; how the devolution of these tenures did not follow any ordinary rules of inheritance, but went from the strongest to the strongest of the ruling family; and how, contrary to the ordinary law of the country, they were not divided, but went to a single person (as did the greatest zemindary and talookdary tenures in Bengal and Oudh), being treated rather as semi-hereditary offices, than under the laws applicable to property.

(f). There can be no doubt that the village system formerly prevailed in Ireland. The whole system of settlement and valuation is based on it to the present day, the town lands being exactly preserved, though the villages have dissolved into separate farms. Davies, in some passages, speaks as if there was then a still subsisting system of constant repartition of the lands among the villagers, and this is no doubt the system of which there are abundant traces in India and elsewhere, but I suspect that in Ireland, as in India, it had gradually become rare or had fallen into disuse; for Davies, in other passages, very fully and particularly explains how the village lands descended by inheritance under what he likens to the custom of gavel-kind, that is, the law of equal partition among the sons, common to Ireland, India, and most Aryan countries where the feudal system has not prevailed over it. * * *

II. On considering the whole subject of Irish land tenure, Sir John Davies came to the very sensible conclusion that English ideas do not altogether apply; that neither the superior nor the inferior holder can be considered to be the free-holder; but that each has rights according to his degree. The question of fixity of tenure was in fact decided in favour of the tenant. Provision was made for commuting the uncertain cuttings and cosherings into certain payments, consolidating them with the rent, and prohibiting the landlords from taking, under any pretext, more than the rent thus adjusted; all in terms almost identical with those of Lord Cornwallis' Indian Regulations, for it is a great mistake to suppose that the Cornwallis Regulations made the zemindars complete and absolute owners. On the contrary they were strictly bound not to demand more from the ryots than 'the established rates,' and not to eject them so long as they paid those rates. Sir John Davies did, however, what Lord Cornwallis did not do, that is, the holdings and liabilities of the under-tenants were recorded, and their rights were secured, not only in theory, but by effective record of rights. Under this settlement it is said that Ireland for a generation enjoyed peace and prosperity such as she had never had before, and perhaps has not seen since.

3. The system of village communities prevailed in Ireland as in India; the natural transition from that state should have been to separate peasant proprietorships, but this stage of progress, which every other country has reached, was

missed by Ireland and Bengal, while England has receded from it. In 1866, Professor Cairnes wrote as follows:—

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I. (a). In his admirable "Plea for Peasant Proprietors," Mr. Thornton observes that "Ireland is one of the few countries in which there neither are, nor ever were, peasant properties." The remark well deserves consideration, and, followed up, will be found to throw light on some characteristic features of Irish industrial life.

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Para. 3, contd.

(b). In one of the most profound of modern works on the philosophy of jurisprudence (Maine's *Ancient Law*), it has been shown that the primitive condition of property is that of joint ownership—"that property once belonged, not to individuals or even to isolated families, but to larger societies, composed on the patriarchal model;" and that private property, as we now know it, has only attained its actual form by a process of 'gradual disentanglement of the separate rights of individuals from the blended rights of a community.' This discovery, if taken in connection with the known historical facts of the conquest of Ireland, will be found to throw some light upon the problem with which we are now concerned.

[Professor Cairnes then showed that down to the reign of Elizabeth, the landed system in Ireland was that of village communities, under chieftains who "had no longer estate than for life in their chiefries, the inheritance whereof did rest in no man," precisely as was the case with zemindars before the permanent settlement. This system was known as the Irish custom of Tanistry, or the Brehon tenures.]

II. Nevertheless, extraordinary and apparently impracticable as were these Brehon tenures, judged by the standard of modern English notions, they in fact bear a strong analogy to—indeed, I might say, are in character identical with—various modes of possession which have at different times existed amongst other nations during the corresponding stage of their growth, and of which some examples are still extant; a fact from which we may infer that they were on the whole not unsuitable to the social and industrial requisites of those who lived under them. And from the same fact we are justified, I think, in assuming that had the Irish people been allowed to follow the course of their natural development, what has happened in other countries would have happened in Ireland also. It is reasonable to think that the progress of population, and enlarged intercourse with more advanced nations, would there, too, in the absence of disturbing causes, have produced their natural effects in quickening the sentiment of property; that the exactions of the chiefs would have become more and more strictly limited; that the occasions for redistributions would have been made less and less frequent; that the common sept property would by degrees have passed more or less completely into individual possession; in a word, that the Brehon tenures would have ripened into a peasant proprietorship. But just at this time a large portion of the soil of Ireland passed into the hands of English owners, and within half a century, the remainder

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The Irish cottier
cannot be com-
pared with the
peasant-proprie-
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No analogy
between the
cottier and the
Irish tenant.

for the most part followed the same destination. These owners took the place of the native chiefs, but with proprietary pretensions of a far different kind. The loose prerogatives of the Tanists were suddenly, by the fiat of an English judge, transmuted into the definite ownership of English law; and on the other hand, the claims of the members of the clan, adjudged by the English courts to be no estate, "but a transitory and scrambling possession," were absolutely repudiated. The natural development of property in the soil was in this manner violently arrested in Ireland, which has accordingly never known peasant proprietorship. It has, however, in lieu thereof, furnished the world with a type of tenure peculiarly its own. 'Cottierism' is, we believe, a specific and almost unique product of Irish industrial life.

III. One of the most curious and unfortunate blunders which have been made about the Irish cottier, is that which confounds him with the peasant-proprietor under the general description of a representative of *petite culture*. In fact the two forms of tenure are, in that which constitutes their most important attribute, the nature of the cultivator's interest in the soil which he tills, diametrically opposed; and the practical results stand as strongly in contrast as the conditions. It would be difficult, perhaps, to conceive two modes of existence more utterly opposed than the thriftless, squalid, and half-starved life of the peasant of Munster and Connaught, and that of the frugal, thriving, and energetic races that have, over a great portion of continental Europe—in Norway, in Belgium, in Switzerland, in Lombardy, and under the most various external conditions, turned swamps and deserts into gardens.

IV. And it is scarcely a less gross error to apply to the same status, after the fashion so common with political reasoners in this country, conclusions deduced from the relations of landlord and tenant in England and Scotland. True; the cottier and the cultivator of Great Britain are alike tenant-farmers; they both pay rent, which is, moreover, in each case determined by the competition of the market. But under what circumstances does competition take place in the two countries? In Great Britain the competitors are independent capitalists, bidding for land as one among the many modes of profitable investment which the complex industrial civilisation of the country supplies: in Ireland they are men—we speak, it will be remembered, of the cottier class—for the most part on the verge of absolute pauperism, who see in a few acres of land their sole escape, we cannot now say from starvation, but at best from emigration and the workhouse. Is it strange that the result should be different in the two cases? and that 'rent' which in England and Scotland represents exceptional profit (the appropriation of which by the landlord merely equalizes agriculture with other occupations), should in Ireland be the utmost penny that can be wrung from the poverty-stricken cultivator.

and distinc-
tion between the
Irish and the
English

V. How, again, does the analogy of the tenant-farmer of continental countries meet the present case? Between the "métayer" and the cottier there is the broad distinction that, while the rent of the former is a fixed proportion of the produce determined by custom, that of the cottier is whatever competition may make it, the competition, we repeat

of impoverished men, bidding under the pressure of prospective exile or beggary.

VI. Lastly, we must insist on keeping the cottier distinct from another class also, with whom he has been more pardonably confounded, and with whom, indeed, he has many real affinities,—the serf of Eastern Europe and of mediæval times. Judging from their ordinary existence, there is, perhaps, little to distinguish the cottier from the serf. Nevertheless, they are not the same. The serf is *adscriptus glebæ*; the Irish cottier, as he knows by painful experience, is bound to the soil by no tie save those imposed by his own necessities. He has unbounded freedom to relinquish, when he pleases, his farm and home, and to transfer himself to the other side of the Atlantic, and he pays for the privilege (of which, no doubt, he has largely availed himself), in the liability, to which the serf is a stranger, of being expelled from his farm and home when it suits the views of his landlord. Such is the Irish cottier, the essential incidents of whose position are well summed up in the definition of Mr. Mill—"a labourer who makes his contract for the land without the intervention of a capitalist farmer," and "the conditions of whose contract, especially the rent, are determined not by custom but by competition."

VII. It has been seen that the confiscations of Irish property in the seventeenth century precluded the realisation, in conformity with the analogy of industrial progress in other countries of a peasant-proprietor régime. It is obvious that those circumstances were equally unfavourable to the rise of a tenant-farmer class on the modern English pattern, who might, by a steady demand for the services of the natives, have raised them at all events to the level of the Dorsetshire agricultural labourer; for disposable capital is the basis of such a class, and disposable capital did not exist in Ireland. From the advantages of the *métayer* tenure of the Continent, again, the Irish were excluded by moral, but not less potent causes. *Métairie* belongs eminently to that class of institutions which are not made, but grow. Resting upon custom, it pre-supposes common traditions and mutual confidence and regard—conditions which, it is superfluous to say, were not to be found in Irish industrial society. There remained serfdom, which was in effect, though not in name, the state of life into which, in the period immediately following the great confiscations, the mass of the Irish people fell. But as we have said, serfdom, though closely allied to, is not precisely cottierism. To realise the latter, it is necessary to apply to the former the maxims of competition and contract; and this was what in the course of the eighteenth century happened in Ireland. Modes of action which are only suitable, which are only tolerable, in an advanced industrial civilization, where the actors stand on independent grounds and exercise a real choice, and where, moreover, an effective public opinion exists to control extravagant pretensions, were suddenly introduced and rigorously applied amongst a people just emerging from the nomad state. In the lowest deep there was thus found a lower deep; and Irish serfdom merged in the more desperate *status* of the Irish cottier.

4. PROFESSOR SENIOR.

I. Where there is little capital, and there are few small proprietors, society is divided into the very rich and the very poor, with

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Large estates
and a cottier
tenantry.

scarcely any intermediate class. The land is cut into small holdings, because it is only in small holdings that a tenant without capital can cultivate it. And this very sub-division renders the landlord often unable, and almost unwilling, to employ on it capital of his own. The productiveness of his estate might be doubled by an extensive drainage, but the consent, perhaps the co-operation, of the tenants is necessary, and a poor, ignorant, and suspicious population believe either that what is beneficial to their landlord must be mischievous to themselves, or, at least, that if their consent is to be asked, it must be paid for. * * The land which a family with little capital can cultivate does not, except during a small part of the year, afford profitable employment for their whole time. If it were their own, indeed, they might, and probably would, keep constantly at work on it, and so gradually improve it; but they have no motive to treat thus another man's land. As the supply of labour, except during the short busy seasons, is great, and the demand almost nothing—in other words, as almost everybody is willing to be hired, and scarcely anybody willing or able to hire—the wages of labour are very low, and employment at any wages at all is scarce and precarious. The whole rural population therefore—and where there is little capital this is nearly the whole population—is thrown for support on the occupation of land.

It is absurd to
complain of
excessive rents
where the whole
population com-
petes for land.

II. It is absurd to complain that under such circumstances rents are excessive,—that everything beyond a miserable subsistence is extorted from the tenant. The price of the use of land, like the price of every other commodity of limited supply, is fixed, not by the seller, but by the purchaser. In England and Scotland the competition of the bidders for farms is limited by the amount of capital and skill required, and is further limited by the general rate of profit. No one will knowingly offer a rent which does not allow him an average return for his capital. And as to the labourers, to them a bit of land is a luxury, like the possession of a small estate to a shop-keeper. If it comes in their way, they take it; but they will make no sacrifices to obtain it, and never look to it as a means of subsistence.

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country the
alternatives are
occupation of
land, beggary,
or famine.

III. But in a country in which every one who can find a landlord to accept him can be a farmer, and scarcely any one can be a labourer; where the three only alternatives are the occupation of land, beggary, or famine; where there is nothing to repress competition and everything to inflame it; the treaty between landlord and tenant is not a calm bargain, in which the tenant having offered what he thinks the land worth to him, cares little whether his offer is accepted. It is a struggle like the struggle to buy bread in a besieged town, or to buy water in an African caravan. It is a struggle in which the landlord is tempted by an extravagant rent; the agent by fees or by bribes; the person in possession by a premium to take him to another country; and rivals are scared away by threats, or punished by torture, mutilation, or murder. The successful competitor knows that he has engaged to pay a rent which will swallow the surplus beyond the poorest maintenance for his family that with his trifling stock he can force the land to produce. He knows that if he fails to pay he must expect ejection, and that ejection is beggary. He calculates how small a portion of his tenement, devoted to the most abundant variety of the most abundant species of food, will support his

family. He grows on that portion, in our climates, lumper potatoes, and cultivates on the remainder something better—not to consume, but to sell, in order to meet his rent. If, as is frequently the case, he has not been able to obtain land more than enough to supply his family with potatoes, he works out his rent by hiring himself to his landlord. * *

IV. In England and Scotland the great majority of the population are loyal, in the primitive sense of that abused word, that is, they are the friends of the law. They may wish portions of it to be altered; but so far are they from resisting it, that they unite to prevent it from being resisted by others. * * This is accounted for when we recollect that in England and Scotland the law interferes in favour of the poor far more frequently than in favour of the rich. Where the bulk of the population live on wages, the poor are the creditors, and the rich and the middle class are the debtors. * * In Ireland, on the contrary, the poor are the debtors, the rich the creditors. The 1,000,000 families who now occupy the soil of Leinster, Munster, and Connaught, scarcely know the existence of the civil law-courts, except as the sources of processes, distresses, and ejections.

V. In England, the landlord is absolute master of the land, subject to the qualified and limited interest which he may choose to concede, or (to use the technical word) to *let* to his tenant: and he generally erects the necessary buildings, and makes the more expensive permanent improvements. * * ‘The first English conquerors of Bengal,’ says Mr. Mill, ‘carried with them the phrase *landed proprietor*, or landlord, into a country where the rights of individuals over the soil were extremely different in degree, and even in nature, from those in England. Applying the term with all its English associations, in such a state of things, to one who had only a limited right, they gave an absolute right; from another, because he had not an absolute right, they took away all right; drove all classes of men to ruin and despair; filled the country with banditti; created a feeling that nothing was secure, and produced, with the best intentions, a disorganization of society which had not been produced in that country by the most ruthless of its barbarian invaders?’ With equal impropriety we have transferred our English notions into Ireland. There are *there* also persons *called* landlords, farmers, and labourers, but they resemble their English types in little but name. In Ireland the landlord has been accustomed to erect no buildings, and make no improvements whatever. He is in general a mere receiver of rent; his only relation to his tenants is that of a creditor. They look to him for no help, and on the other hand, he can exercise over them little control. It is very seldom that he prescribes to them any system of husbandry, or, if he do so, that he can safely enforce it.

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J. E. CAIRNES.
Para. 5.

Confusion and destruction of rights of property in Ireland and in Bengal from misapplication of English ideas.

5. PROFESSOR J. E. CAIRNES.

(a). “Irish landlordism,” as it has existed in the last and the earlier half of the present century, may be roughly resolved into three categories: firstly, the great landlords, with a few exceptions, Englishmen or of English descent, and Protestants, of whom the great majority

Irish landlordism.

had derived their estates from the confiscations of the seventeenth century; secondly, the owners of smaller estates, by extraction also in great part English, or at all events British, and indebted for their properties mainly to the same political revolutions; and thirdly, the class of middlemen or profit-renters who, though themselves paying rent to landlords, were by religion, political sympathies, and habits, intimately connected, and, in their conduct and general views, practically identified with the proprietary class. Of these, the first class to a great extent became absentees, managing their estates either through agents, or, as was the more common case, through middlemen—those who form the third category in the above enumeration—to whom they let the land in large portions at low rents, and who sub-divided it and sub-let it to the occupying tenantry. The second and third classes, whose revenues were not sufficient to allow of residence in England or abroad, for the most part lived on the estates which they owned or supervised. * *

(b). Industrial society in Ireland had thus, by the middle of the last century or a little later, received its definitive form—that form in which it has existed down to a quite recent date. We have already seen how one constituent of the system, the cottier element, grew in dimensions towards its close, contemporaneously with the great extension of tillage-farming, which was the industrial feature of the time; and I have now to observe that the same cause was not less powerful in developing the territorial economy in other directions. As tillage was extended, rents rapidly rose. I believe I should be within the mark in stating that in this period, between 1760 and the close of the French wars in the beginning of the present century, the land revenues of Ireland were augmented in the proportion of four to one. Each step in this progress would of course furnish increased scope for the multiplication of new interests in the soil, and these took the form determined by the prevailing influences. Landlords who formerly resided on their estates could now afford to spend a greater or less portion of the year in some of the fashionable centres of the empire. Middlemen, under leases granted when prices were low and pasture the prevailing pursuit, found their incomes growing; and, their ideas rising with their fortunes, in many instances yielded, like their betters, to the attractions of city life. Absenteeism thus increased, and, with absenteeism, agencies and profit-renting. A second and a third race of middlemen thus intruded themselves between the head landlord and the occupying tenantry. The grades of the territorial hierarchy became constantly more numerous, the higher no less than the lower being identified with the system of agriculture which had now established itself in the country. The corn laws soon came to aid the more fundamental tendencies, and the commercial effects of the French wars added a new and powerful stimulus to the now complex influences which were impelling Ireland on her disastrous career. In that career she was arrested by the fearful summons of the famine of 1846. The shock, rude as it was, extensively deranging as it could not fail to be to the entire territorial system, might possibly not have been fatal, had not the famine been the occasion of free trade; but, as I have already shown, free trade effectually and for ever sealed its doom.

6. The account of middlemen is continued in the following extract from "Systems of Land Tenure in various countries," published by the Cobden Club.

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XXIX.

MR. LONGFIELD,

Para. 6.

I.—RIGHT HON'BLE M. LONGFIELD.

(a). Thus sub-letting became very general, and there were large districts in which scarcely a single occupying tenant held directly from the owner of the fee.

Middlemen.

(b). This system was useful to nobody but the middleman. He had a good income, with very little risk or trouble; and in the earlier part of this century, during the French revolutionary war, and the depreciation of the currency, caused by the suspension of cash payments by the Bank of England, rent of land rose so much that in many cases the middleman had as much profit from the land as the head landlord himself. Sometimes land rose so much in value that the tenant of the middleman was able to sublet his farm at a profit, and thus to become a middleman himself.

(c). The peasantry under this system were reduced to a wretched state. The traditions of liberality which belong to men who inherit large estates did not exist among men who took farms for the purpose of sub-letting them at the highest rent they could obtain. They were not expected to deal like gentlemen with their tenantry. They belonged nearly to the same class as the farmers, and made as hard a bargain in setting a farm as they would in selling a horse. They could scarcely afford to be liberal. If a gentleman, whose estate is let for fifteen hundred a year, makes a reduction of his rent at any time to the extent of 20 per cent., he loses one-fifth of his income; but if he was a middleman, paying a rent of twelve hundred a year, he could not make such a reduction without losing his entire income. The same principle extends to every case. Every act of liberality by the middleman would cost him a much larger proportion of his income. His trade was to extract as much as possible from the wretched occupiers of the land. The increase of population was so rapid, and the general poverty of the country was such, that men were found willing to engage to pay him anything that he demanded. The wages of labour were so low, and the difficulty of getting employment was so great, that it was better to get possession of land on any terms than to trust to casual employment for a subsistence.

(d). The middleman not having a permanent interest did not care for the improvement or deterioration of the estate. A thought upon the subject never crossed his mind.

(e). Two circumstances were of material assistance to the middlemen, and to those who acted like middlemen, in their treatment of the tenantry. First, there were no poor laws. They were therefore enabled to cover the land with a starving population, without the possibility of being called upon by law to cultivate anything to their support. Secondly, the law of distress was more severe than it is now, and enabled the landlord to distrain growing crops. * * Thus the landlord frequently thought it for his interest to encourage the sub-division of farms. I remember many years ago hearing an extensive land-agent laying down

the principle in a very authoritative manner, that it was better for the landlord that there should be as many occupiers as possible on the land, since the more occupiers, the more tillage was necessary to support the tenants, and the landlord was able to help himself to the produce of the soil before they got anything.

(f). When the great fall of land took place after the year 1815, many middlemen were broken, and left the chief landlords to deal with the land itself, or with the immediate occupiers. Many landlords resolved to grant renewals of leases to none but the tenants in actual occupation. Acts of Parliament were passed to prevent or discourage sub-letting, and the system of middlemen gradually died away. They exist now chiefly where the land is held under bishops' leases, or under leases for lives remarkable for ever. * *

(g). The system of sub-letting, at once the cause and the effect of Irish poverty, has nearly disappeared (1870), and the middleman by profession no longer exists.

Competitive
rents.

II. Regarding rents obtained by competition, Mr. Longfield observed:—

(a). This complaint of high rents has been made without ceasing for more than three hundred years. There was never less ground for it than at the present day, although in some instances the rent demanded is still too high, but this chiefly occurs where the landlords are middlemen, or where the property is very small.

(b). Several circumstances concurred in former times to make the competition for land keener, and the demand for high rent more inconsiderate, then than now. One great difference between English and Irish law, the importance of which it is difficult to estimate, was that in Ireland there were no poor laws. The poorer tenant of the class that in England would look to the parish for support, saw no resource in Ireland but to obtain on any terms possession of a sufficient quantity of land to produce as much potatoes as his family could consume, with, if possible, after the potatoes, on the following year, as much corn as with his pigs would be sufficient to pay the rent. The general poverty and ignorance of the people increased the competition. There was not much difference among the people who applied for a vacant farm. No man had such capital or skill as to enable him to make a greater profit than his competitors, and the most obvious destination was the willingness to offer the highest rent. * *

(c). The law gave some encouragement to this mode of dealing on the part of the landlord, by the absence of poor laws, by the law of distress, which enabled the landlord to help himself without the expense of litigation with an insolvent tenant, and by want practically of any law limitations to affect the landlord's claims against his tenants. The law has been altered in this respect, although scarcely to a sufficient extent.

7. MR. KNIGHT, M.P. (28th March 1870).

Poor Law.

In the reign of Elizabeth, and indeed for several reigns, clearances (evictions) were made in all directions, and repeated Acts of Parliament were passed with the object of preventing them, but without effect. In every country there were many hundreds of able-bodied vagabonds who

free to change his tenant if he thinks fit, and to let the farm to some other person who will pay a higher rent for it, or who may be, from other circumstances, a more advantageous tenant; and the tenant, on his part, is free to seek a more eligible farm. Both parties know that a lease is binding only while its term holds, but that from its conditions both parties are free when it expires.

(d). Then again, in England, the farms generally are of some considerable extent—sixty or seventy acres is a small holding for one farmer,—and it often happens that the farms extend to many hundreds of acres.

(e). Here, too, the tenant-farmer is a class distinct from the agricultural labourer; for though there are many tenant-farmers who cultivate their lands with their own hands, yet, the class of tenant-farmers in England is distinct as a class from agricultural labourers; and, lastly, every tenant-farmer, on taking a farm in England, and I believe in Scotland, looks, as a matter of course—not founded upon any law certainly, but upon a custom which is rarely departed from—to the landlord, to place the farm, before he enters upon it, in tenantable repair, that is, in regard to the fences, the drains, the dwelling-houses and buildings, and, in short, in regard to all those things which in England are considered as the necessary accompaniments to a farm.

II. (a). But in Ireland the case, in reference to all these various matters, is not only dissimilar, but exactly the reverse. There the number of proprietors of the land is small, and their average holding is large; the landlords, many of them, are non-resident, and consequently but little acquainted with the occupying tenants; there a large portion of the estates is held by middlemen, though, I am happy to say, that practice is to some extent falling into disuse, and they let out the land to the occupying tenants at rack-rents (*loud cries of "Hear, hear"*). I say at rack-rents.

(b). And I must also add that the holding is at will. If leases are granted in Ireland, it is as the exception, and not as the rule; whereas in England it is the rule, and not the exception, unless, indeed, in some few cases where the family of the landlord having been long resident in the district has, in its successive generations, been brought into connection with successive generations of tenants, and in those cases both landlord and tenant, being perfectly and intimately acquainted, have an implicit reliance upon each other's character and honour; but in Ireland, at all events, as I have said, the lease is the exception, and not the rule, and in Ireland the farms were of the smallest possible dimensions. * *

(c). Your Lordships will find on examining the report of the Po Law Commission, made in 1843, and the evidence on which it is founded that complaints were made as to the practice of consolidating farms, a of the hardship of the practice which was growing up of throwing several small farms into one large one; and upon the question being asked to what extent the farms were raised by this practice of consolidation, it turned out that these large farms, of which complaint was made, amounted to twenty-five, fifteen, and, in some cases, to no more than ten acres. This proved how small was the average amount of farms in Ireland when farms of twenty-five down to ten acres (a n

Lord here made some observation which was not audible; well, take them from fifty, if you will, down to twenty statute acres) were looked upon in Ireland as exorbitant holdings, and these were held under middle men, often tenants-at-will, under a non-resident landlord, and held to an extent not exceeding twenty acres, the universal practice being that all buildings, including even the dwelling house, all fences and drains, which in England were put in repair by the landlord, were expected to be done by the tenant, and if not, they were not done at all.

(d). Now imagine the case of any one of your Lordships having an estate of 20,000*l.* a year divided into twenty-acre farms, the owner never visiting the tenants, those tenants holding under an intermediate lease, and, as tenants-at-will only, paying a rack-rent, and required not only to make good and keep in repair all drains, fences, and out-buildings, but even to build their own dwelling-houses. Could that noble Lord be surprised to find that no improvement took place in those farms, and that the dwellings of the tenants were mere hovels? Could he be surprised to find on these farms everything neglected and in ruin; the land unproductive, the cultivation defective, and the estate peopled, instead of by an industrious, thriving, and a peaceful, by an idle, a dissolute, and a disturbed population? And yet this, with some honourable exceptions, is not a highly coloured or exaggerated picture of the position of a large portion of the tenantry of Ireland.

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MR. W. E. GLADSTONE.

Para. 8, contd.

III.—THE RIGHT HON'BLE W. E. GLADSTONE (*5th February 1870*).

(a). In Ireland the landlord does not, as a rule, find the capital necessary for the improvement of the soil, although he does so in exceptional and perhaps multiplying instances; in England the landlord is the person who does find that capital. In Ireland the landlord is frequently an absentee, and unhappily this has been so during the whole of the seven hundred years of the connection between the two countries; in England and Scotland complete absenteeism is comparatively rare. In Ireland a great jealousy has prevailed among a large body of the landlords during the last forty years against granting tenures longer than from year to year; whereas in Scotland, on the contrary, the almost universal practice has been to grant much longer terms; and in England there is hardly a county where such jealousy on the part of the landlords is to be found. * *

English and Irish landlords contrasted.

(b). In England and in Scotland, the idea of holding land by contract is perfectly traditional and familiar to the mind of every man; in Ireland, on the contrary, where the old Irish ideas and customs were never supplanted except by the rude hand of violence, and by laws written in the statute book, but never entering into the heart of the Irish people, the people have not generally embraced the idea of the occupation of land by contract; and the old Irish notion, that some interest in the soil adheres to the tenant, even although his contract has expired, is everywhere rooted in the popular mind. * *

Traditions of his proprietary right deeply rooted in the Irish cultivator.

(c). I think that of the agrarian crimes which we have been so recently lamenting, no small portion is to be traced to an interference with the fixed usages of the country, and with what the people believed to be their

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XXIX.MR. W. E.
GLADSTONE.

Para. 8, contd.

Parliament altered for the Irish cultivator, like Lord Cornwallis for the Bengal ryot, the whole law which had protected the occupier in his holding, and brought into play new statutes of eviction (Huftum and Panjum).

rights, interferences which were in some cases imprudent, and which in others, beyond a doubt, deserved a stronger epithet.

(d). You (Parliament) have altered the whole law with respect to the defence which protected the Irish occupier in his holding. You have brought into play new statutes of eviction. * * I will refer to only one of these Acts of Parliament—that of 1816—which was passed at a period when the high prices of the war began to be felt, and the high rents could no longer be paid. Parliament was appealed to, under these circumstances, to grant facilities for eviction which had not previously existed. * * The history of Parliament tells us of a series of interferences in this respect. In many instances these interferences have been unhappy to the occupier, and in some they have been something more than unhappy. I cannot but fear that they have partaken of injustice. The Act of 1816, 56 Geo. III, c. 18, recites in its preamble that such were the expenses and delays of ejectment, that it was absolutely and entirely impracticable as a remedy. But if it were entirely, or in a great degree, impracticable as a remedy, look at the effect of the change—see what a defence that state of the law was to the Irish occupier in the possession of his holding. All that defence we have altered. All that shelter we have stripped away. We have simplified the law against him. We have made ejectments cheap and easy, and notices to quit have descended on the people like snow-flakes. All these things have been done by Parliament, and no compensation has been made to the Irish tenant. * *

(e). With respect to those who may desire the acquisition of land, we propose that loans of public money shall be granted to occupiers desirous to purchase from their landlords any cultivated lands now occupied by themselves, and this arrangement will be so framed as not to restrict the loans to cases of private contract, but to extend them also to those cases where the proprietor, attracted by the advantages of a Parliamentary title, thinks proper to carry his estate into the Encumbered Estates Court. This assistance will only be given to occupiers who are willing to buy where the landlord is willing to sell. They will be required to pay down not less than 25 per cent., and the repayment of the loan will be arranged upon the basis of the Drainage Acts.

Irish Land

9. The following rough notes relating to the objects of the Irish Land Act are from a paper in Fraser's Magazine for May 1874:—

(a). The entire number of holdings in Ireland in 1870 was 661,931. Four-fifths of these are 30 acres or under, 135,392 are held under lease. Over 100,000 of these are situated outside Ulster, and thus excepted from compensation.

(b). In Ulster the re-adjustment of the rent at periodic intervals is a part of the custom. The right of the landlord to an increased rent, as the price of produce increased, seems to have been acquiesced in. The demand of the tenants has been fixity of tenure at a valuation rent; not that the present rent should be converted into a rent charge.

(c). By the second part of the Irish Land Act, the Legislature has simply sought to facilitate the purchase of their holdings, by tenants from landlords willing to dispose of them for their own interest. Its

object is gradually to create a peasant proprietary throughout the land. * *

(d). The Government valuation of the rental for the whole of Ireland, excepting house or town property, is over ten millions sterling.

(e). The Act enables the Board of Works in Ireland to advance money to tenants for the purchase of their holdings. The purchase money is in all cases paid into the Landed Estates Court, and there protected for all interested parties.

(f). The whole number of landed proprietors in Ireland who have over one hundred acres of land is 13,565. Of these but 5,966, representing property to the amount of 5,089,610*l.* annual rental, or about half that of the whole of Ireland, reside on their estates. The remainder are non-resident. Some reside in Ireland elsewhere than on their estates. But about 2,973, representing property to the amount of 2,470,816*l.* annual rental, are permanent absentees from Ireland. * *

(g). From the foregoing it is evident that in seeking to solve this most difficult question, two principles have been tried, and with different results. Neither resembles those which have prevailed in other countries; for neither acknowledges any co-proprietorship of the soil in the occupiers. The one has been to legalise the Ulster custom, the other to place a heavy tax upon ejections. Both proceed on the assumption that the tenant deprived of his holding suffers a loss, and seek to compensate him in such respect.

(h). * * In that part of Ulster where the custom of tenant right exists in its integrity, since the manner of estimating the amount of compensation has become known, the landlords have abandoned all wish to obtain possession of the land, satisfied with obtaining a rent fairly estimated. In the other provinces of Ireland, and in that part of Ulster where the custom does not so exist, ejections are as numerous as before; and the right of the occupiers to dwell unmolested in their holdings, so long as they pay a fair rent, is still unrecognised.

10. MR. J. A. FROUDE (*November 1872.*)

I. (a). We will suppose some one to have been travelling through Ireland in 1802, when the constitution after the Union was finally at work. What would have been his experience? He would have seen three-quarters of a country, richer naturally than Scotland, as rich as the best parts of England, lying a wilderness, dotted with potatoe gardens: districts as large as counties mere wastes of morass; a peasantry ragged and miserable, living in houses in which an English gentleman would not keep his sporting dogs; families—the Irish are the most prolific people in the world—families of twelve or thirteen huddled into hovels more like caves in the earth than human dwelling-places, without windows, with a hole in the thatch to let the smoke out; for furniture, an iron crock and perhaps a stool, a heap of straw or heather for beds; in wet weather, pigs, cows, poultry, and human creatures, all tumbled in together into a space 12 feet long and 8 feet wide; the fat sow, perhaps, the pillow of grown-up girls, the little ones burrowing in the turf-stack; the food, potatoes and buttermilk; the clothes of the father and mother, a bundle of rags; the clothes of the

Ireland in 1802:
the cottiers
miserably poor.

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MR. FROUDE.

Para. 10.

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Mr. Froude.

ra. 10, contd.

it not unhappy,
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icted.

children, those which nature gave them. Their holdings were perhaps an acre or two of potatoe ground, for which they were paying the old rents, five or six pounds an acre. The pigs and the cow paid the and the priest's dues. The wages, six-pence a day for the husband and nothing for the rest, found a coat and a pair of shoes for the husband, a cloak for the wife, and a coloured handkerchief or two for the girls to appear in at mass on a Sunday.

(b). This was the condition of the working peasantry of one of the three kingdoms which composed the wealthiest of existing communities. They were not unhappy. They were light-hearted, and as long as the potatoes lasted, and while they were undisturbed in their future farms, they were fairly contented. Their chief alarm was that they were at the landlord's mercy. If another tenant bid above them for the land the landlord wanted the farm, they might at any moment find themselves adrift. No matter that the very ground they occupied owed its value to them. They had drained and fenced and tilled it after the best fashion. They found it barren moor. They made it able, at any rate, to grow food for a dozen human creatures. The landlord called in the rent, and if it so pleased his mightiness, he could turn them into the street to starve.

(c). The landlords themselves were of three sorts,—the magnates who lived in splendour in London, and managed the estates by managers; a few cultivated and distinguished resident noblemen and gentlemen; and the squires and squireens who spent their lives in hunting, gambling, drinking, and fighting duels, themselves out at elbows, idle, extravagant in debt, and haunted by the bailiff, their lands often in the hands of creditors, who of course squeezed out of the tenantry the last of the shilling penny. * *

(d). Such Ireland remained after the union, after England had pretended to govern it for six hundred years. * *

the
famine the land-
lords were
mostly absentees
or embarrassed.

II. (a). These two measures, the establishment of the Irish police and the establishment of Irish national education, were in every way admirable. But the sorest difficulty, which remained untouched, was the system of landed tenures. A third of the Irish soil was still owned by absentee landlords. Half the rest belonged to needy, unthrifty gentlemen, whose estates were mortgaged to the hilt; who were out at elbows like their tenants without a shilling to spend on drains, or fences, or cottages, or improvements. If they were themselves disposed to be indulgent, the creditors, the money-lenders, exacted the last ounce of their power from the peasantry. The peasantry had multiplied astonishingly. In 1782 there were but three million inhabitants in Ireland. In 1846 the three million had become nine.² In the good old times their lawless habits had kept their numbers down; English administration, if it had done little else, had put an end to private war and plunder; and, deprived of its national check, the Irish race had trebled itself in three-quarters of a century. The Catholic clergy encouraged early marriages because they prevented immorality. Landlords made no objection, for the more people there were, the higher the rents. There were then no poor-rates in Ire-

¹ Five millions in 1801, per Registrar General's estimates.

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MR. FROUDE.

Encumbered
Estates.

Para. 10, contd.

that I must ask you to attend to it particularly. Before the famine and before the poor-law, the more families there were on the estates the higher the rent. After the famine, when, in times of extremity, the support of the poor was thrown on the land, and rates were levied on it for their maintenance, a large population was a serious encumbrance. There were very rarely leases in Ireland. Landlords liked at all times to hold their tenants in hand, that they might command their votes at elections. They had before encouraged the multiplication of them. They now turned round and said: "There are too many of you. Four families of you are living on ground that will only support one, and we cannot allow you to remain." Especially this was the language used by the purchasers under the Encumbered Estates Act. * * The purchasers were chiefly Irish men of business, who had made money, and wished to invest it to advantage; and as the worst tyrants of the poor in the eighteenth century had been the Irish middlemen, so now the Irish who bought under the Act became the hardest of land-owners.

On estates so bought the rents were generally increased, and the superfluous families cleared off without remorse or hesitation. * * *

The land is the home of the Irish people, and the deprivation of their rights in land has smitten the country with a curse.

IV. (a). The heart of the matter lies in the land. The land is the home of the Irish people. The land is the life of the Irish people. Agriculture is their only industry; and those who till the soil have the first right to the fruits of the soil. Of these rights, from immemorial time, under one plea or another, under Chief's law and Norman law, under Scot and Saxon, under English agent and Irish middleman, the peasantry have been robbed, and it has been this systematic plunder which has deprived them of the natural motive to exertion, which has bred, as in a hot-bed, the unthrifty improvident habits that we all deplore, and has smitten one of the most beautiful countries in the world with barrenness.

(b). The land question was the secret splinter in the wound, and the English Parliament set to work to remove it. The Irish Land Act, passed three years ago by Mr. Gladstone, is the most healing measure that has been devised for Ireland during two centuries at least. * * The landlord cannot evict the meanest peasant now, without compensating him for every stroke of work which he has put into the soil. He must pay a further fine for disturbing him.—(*J. A. Froude, November 1872.*)

11. MR. JAMES CAIRD (*The Landed Interest, &c., 1878*).

IRELAND.

Encumbered
Estates Act.

In a few years land to the value of twenty-five millions sterling was disposed of under the Encumbered Estates Act, twenty-four of which were distributed among creditors. In order to secure the land-owners' prompt attention in future to the condition of the people, the incidence of the poor rates, which had previously been placed wholly on the tenant-occupier, was divided equally between him and the land-owner. In fifteen years, emigration and the sale of encumbered estates had removed the most needy class of the population. Prosperity then began again to dawn upon agriculture in Ireland; works of improvement followed the introduction of capital, supplied partly by Government loans and partly by new land-owners. Labour having become less

plentiful was better employed and more liberally paid, and the more energetic of small farmers were ready to enlarge their holdings on every favourable opportunity. As time went on, a great change was found to have taken place; the old eagerness for the occupaney of land returned, but not for its sub-division. In less than thirty years, 270,000 of the smallest holdings were merged into adjoining larger farms, one-half of the small holdings of 1845 having totally disappeared. The tide of emigration began to turn, extreme poverty ceased, the proportion of paupers to population became much lower, and the costs of poor-relief nearly one-half less than in either England or Scotland. This was accompanied by better wages to the labourer, higher profits to the farmer, and a rise in the value of land, all fostered by a growing demand for the kind of produce which the soil and climate of Ireland are specially adapted to yield. But the lesson left by the previous disaster has led to the gravest distrust in the system of very small holdings, in a country producing neither wine nor oil, and where the occupier is not the owner of the land. * * *

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MR. J. S. MILL.
Para. 12.
One-half the
cottier farms
disappeared.

The circumstances of Ireland eight years ago appeared favourable for the creation of a class of peasant-proprietors, and Parliament resolved to give the principle a trial. Two opportunities presented themselves; first, in 1869, on the disestablishment of the church, which possessed upwards of 10,000 small holdings of land, in the benefices situated all over the country. The pre-emption of these was offered to the tenants on terms most favourable to them, both as to price and payment, and nearly two-thirds of the offers were promptly accepted. Again, in 1870, the Irish Land Act contained provisions expressly favouring the system; but, though great advantages in regard to terms of payment were also offered by that Act, the results hitherto have been comparatively small. The cause of the difference is very plain. In the first case, the disposal of the lands was imperative, and did not occasion the sub-division of property; while the vendors, the Church Commissioners having no one to consult but themselves, offered these small holdings at low fixed prices without competition. In the second case, on the other hand, it is the duty of the Landed Estates Court to get the best price they can for the land-owner, who may very naturally object to allow small portions to be sold here and there out of his estate to suit the convenience of individual tenants. The farmers, moreover, begin to find themselves very secure in their possession as tenants, under the clauses of the Act, and have thus less inducement to buy the fee-simple; and the land-owners, participating in the general prosperity, are no longer under pressure to sell at the low prices hitherto realised. It is thus, not from any defects in the Land Act, but from the improved condition of the country, and the increased security given to farmers' capital by the Act itself, that this branch of it has become less operative than was anticipated.

12. MEANS OF ABOLISHING COTTIER TENANCY—(*Mr. J. S. Mill—Principles of Political Economy, Book II, Chapter X*).

I. The case of Ireland is similar in its requirements to that of India. In India, though great errors have from time to time been committed,

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Mr. J. S. MILL.

Para. 12, contd.

Means of abolishing cottier tenancy.

no one ever proposed, under the name of agricultural improvement, to eject the ryots, or peasant-farmers, from their possession; the improvement that has been looked for has been through making their tenure more secure to them, and the sole difference of opinion is between those who contend for perpetuity, and those who think that long leases will suffice. The same question exists as to Ireland; and it would be idle to deny that long leases, under such landlords as are sometimes to be found, do effect wonders, even in Ireland. But then they must be leases at a low rent. Long leases are in no way to be relied on for getting rid of cottierism. During the existence of cottier tenancy, leases have always been long,—twenty-one years and three lives concurrent was the usual term. But the rent being fixed by competition, at a higher amount than could be paid, so that the tenant neither had, nor could by any exertion acquire, a beneficial interest in the land, the advantage of a lease was merely nominal. In India, the Government, where it has not imprudently made over its proprietary rights to the zemindars, is able to prevent this evil, because, being itself the landlord, it can fix the rent according to its own judgment; but under individual landlords, while rents are fixed by competition, and the competitors are a peasantry struggling for subsistence, nominal rents are inevitable, unless the population is so thin, that the competition itself is only nominal. The majority of the landlords will grasp at immediate money and immediate favour; and so long as they find cottiers eager to offer them everything, it is useless to rely on them for tempering the vicious practice by a considerate self-denial.

II. A perpetuity is a stronger stimulus to improvement than a long lease, not only because the longest lease, before coming to an end, passes through all the varieties of short leases down to no lease at all, but for more fundamental reasons. It is very shallow, even in pure economics, to take no account of the influence of imagination; there is a virtue in "for ever" beyond the longest term of years; even if the term is long enough to include children, and all whom a person individually cares for, yet until he has reached that high degree of mental cultivation at which the public good (which also includes perpetuity) acquires a permanent ascendancy over his feelings and desires, he will not exert himself with the same ardour to increase the value of an estate, his interest in which diminishes in value every year. Besides, while perpetual tenure is the general rule of landed property, as it is in all the countries of Europe, a tenure for a limited period, however long, is sure to be regarded as something of inferior consideration and dignity, and inspires less of ardour to obtain it, and of attachment to it when obtained.

III. But where a country is under cottier tenure, the question of perpetuity is quite secondary to the more important point—a limitation of the rent. Rent paid by a capitalist who farms for profit, and not for bread, may safely be abandoned to competition; rent paid by labourers cannot, unless the labourers were in a state of civilization and improvement which labourers have nowhere yet reached, and cannot easily reach under such a tenure. Peasant-rents ought never to be arbitrary,—never at the discretion of the landlord; either by custom or law it is imperatively necessary that they should be fixed; and where no mutually advantageous custom, such as the metayer system of Tuscany, has estab-

lished itself, reason and experience recommend that they should be fixed by authority; thus changing the rent into a quit-rent, and the farmer into a peasant-proprietor.

IV. For carrying this change into effect on a sufficiently large scale to accomplish the complete abolition of cottier tenancy, the mode which obviously suggests itself is the direct one, of doing the thing outright by Act of Parliament, making the whole land of Ireland the property of the tenants, subject to the rents now really paid (not the nominal rents), as a fixed rent charge. This, under the name of "fixity of tenure," was one of the demands of the Repeal Association during the most successful period of their agitation; and was better expressed by Mr. Conner, its earliest, most enthusiastic, and most indefatigable apostle, by the words "a valuation and a perpetuity." In such a measure there would not have been any injustice, provided the landlords were compensated for the present value of the chances of increase which they would be prospectively required to forego. The rupture of existing social relations would hardly have been more violent than that effected by the ministers Stein and Hardenberg, when by a series of edicts in the early part of the present century, they revolutionised the state of landed property in the Prussian monarchy, and left their names to posterity among the greatest benefactors of their country. To enlightened foreigners writing on Ireland, Von Raumer and Gustave de Beaumont, a remedy of this sort seemed so exactly and obviously what the disease required, that they had some difficulty in comprehending how it was that the thing was not yet done. * *

V. That there should be none but peasant-proprietors, is in itself far from desirable. * * A large proportion, also, of the present holdings are probably still too small to try the proprietary system under the greatest advantages; nor are the present tenants always the persons one would desire to select as the first occupants of peasant properties. There are numbers of them on whom it would have a more beneficial effect to give them the hope of acquiring a landed property by industry and frugality, than the property itself in immediate possession.

VI. There are, however, much milder measures, not open to similar objections, and which, if pushed to the utmost extent of which they are susceptible, would realize in no inconsiderable degree the object sought. One of them would be to enact that whoever reclaims waste land becomes the owner of it, at a fixed quit-rent equal to a moderate interest on its mere value as waste. It would of course be a necessary part of this measure to make compulsory on landlords the surrender of waste lands (not of an ornamental character) whenever required for reclamation.

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Para. 12, contd.

Means of abolishing cottier tenancy.

APPENDIX XXX.

THE ROMAN EMPIRE.

APP.
XXX.
Para. 1.

1. The following extracts from Dr. Mommsen's History of Rome mark the significance of the principal facts in the present condition of agriculture, and the distribution of land in England. Dr. Mommsen used the Varronian computation by years of the city. The year 1 of the city is identical with the year 753 B. C. The year B. C. is given on the margin.

I.—U. C. 260.

433.
Resident land-
lords.

As the pernicious institution of middlemen remained foreign to the Romans, the Roman landlord found himself not much less fettered to his land than was the lessee and the farmer; he saw to, and took part in, everything himself, and the wealthy Roman esteemed it his highest praise to be reckoned a good landlord. His house was on his land; in the city he had only a lodging for the purpose of attending to his business there. * * The free tenants on sufferance, sprung from families of decayed farmers, dependents, and freedmen, formed the great bulk of the proletariat, and were not much more dependent on the landlord than the petty temporary lessee inevitably is with reference to the great proprietor. The slaves tilling the fields for a master were beyond doubt far less numerous than the free tenants.

II.—U. C. 387 to 479.

increasing
this period.

(a). In the national economy agriculture was, and remained, the social and political basis both of the Roman community and of the new Italian State. The *comitia* and the army consisted of Roman farmers; what as soldiers they had acquired by the sword, they secured as colonists by the plough. The insolvency of the middle class of landholders gave rise to the formidable internal crises of the third and fourth centuries, amidst which it seemed as if the young republic could not but be destroyed. The revival of the Latin farmer-class, which was produced during the fifth century, partly by the large assignations of land and incorporations, partly by the fall in the rate of interest and the increase of the Roman population, was at once the effect and the cause of the mighty development of Roman power. The acute soldier's eye of Pyrrhus justly recognised the cause of the political and military ascendancy of the Romans in the flourishing condition of the Roman farms. But the rise also of husbandry on a large scale appears to fall within this period. In earlier times, indeed, there already existed landed estates of at least

But husbandry
on a large scale
made its
appearance.

on the estate, not purchased at an age capable of labour in the slave-market; and when through age or infirmity they had become incapable of working, they were again sent with other refuse to the market. * * The whole system was pervaded by the utterly unscrupulous spirit characteristic of the power of capital. Slaves and cattle were placed on the same level. The slave and the ox were fed properly so long as they could work, because it would not have been good economy to let them starve; and they were sold like a worn-out ploughshare when they became unable to work, because in like manner it would not have been good economy to maintain them longer. * *

Importation of
Sicilian corn
destroyed the
small farms.

(c). When the small holdings ceased to yield any substantial return through the importation of corn from Sicily and the artificial cheapening of it for the people of the capital, the farmers were irretrievably ruined, and the more so that they gradually, although more slowly than the other classes, lost the moral tone and the frugal habits of the earlier ages of the republic. It was merely a question of time, how rapidly the hides of the Italian farmers would come, by purchase or by resignation, to be merged in the larger properties. The landlord was better able to maintain himself than the farmer. The former produced at a cheaper rate than the latter, when, instead of letting his land according to the older system of petty temporary lessees, he caused it according to the newer system to be cultivated by his slaves. Accordingly, where this course had not been adopted at an earlier period, the competition of Sicilian slave-corn compelled the Italian landlord to adopt it, and to have the work performed by slaves without wife or child instead of families of free labourers.

large estates
themselves
engaging
tillage to
tillage.

(d). The landlord, moreover, could hold his ground better against competitors by means of improvements or changes in cultivation, and he could content himself with a smaller return from the soil than the farmer who wanted capital and intelligence, and who merely had what was requisite for his subsistence. Hence the Roman landholder comparatively neglected the culture of grain, which in many cases seems to have been restricted to the raising of the quantity required for the staff of labourers, and gave increased attention to the producing of oil and wine, as well as to the breeding of cattle. * * The rearing of cattle yielded, on the whole, better results than arable husbandry. * *

Special circum-
stances also
favoured the
growth of pas-
toral husbandry.

(e). But an injurious effect was produced by the Claudian law to be mentioned afterwards (shortly before 536), which excluded the senatorial houses from mercantile speculation, and thereby artificially compelled them to invest their enormous capitals mainly in land; or, in other words, to replace the old homesteads of the farmers by estates under the management of land-stewards and by pastures for cattle. Moreover, special circumstances tended to favour the growth of pastoral husbandry as contrasted with agriculture, although the former was far more injurious to the State. First of all, this form of extracting profit from the soil—the only one which in reality demanded and rewarded operations on a great scale—alone corresponded to the vast capital and to the enterprising spirit of the capitalists of the age. An estate under cultivation, while not demanding the presence of the master constantly, required his frequent appearance on the spot, while the circumstances did not well

admit of his enlarging such an estate or of his multiplying his possessions except within narrow limits; whereas an estate under pasture admitted of unlimited enlargement, and claimed little of the owner's attention. For this reason men already began to convert good arable land into pasture even at an economic loss—a practice which was prohibited by legislation (we know not when, perhaps about this period), but hardly with success. The growth of pastoral husbandry was favoured also by the occupation of the domain land. As the portions so occupied were ordinarily large, the system gave rise almost exclusively to great estates; and not only so, but the occupiers of these possessions which might be resumed by the State at pleasure and were in law always insecure, were afraid to lay out any considerable expense in their cultivation by planting vines, for instance, or olives. The consequence was, that these lands were mainly turned to account as pasture. * *

APP.
XXX.Para. 1, contd.
EXTENSION OF
PASTURAGE.

(f). One of the most important consequences of this mercantile spirit which displayed itself with an intensity hardly conceivable by those not engaged in business, was the extraordinary impulse given to the formation of associations. * * Indications are even found of the occurrence among the Romans of that feature so characteristic of the system of association—a coalition of rival companies in order jointly to establish monopolist prices. * * It was a general rule of Roman economy that one should rather take small shares in many speculations than speculate independently. * * *

The commercial
spirit which
pervaded these
changes developed in joint
stock enterprise.

(g). The Romans perceived, moreover, as it was not difficult to perceive, that it was of far more consequence to give a different direction to the whole national economy than to exercise a police control over speculation. It was such views mainly that men like Cato enforced by precept and example on the Roman agriculturist. "When our forefathers," continues Cato in the preface just quoted, "pronounced the eulogy of a worthy man, they praised him as a worthy farmer and a worthy landlord; he who was thus commended was thought to have received the highest praise. The merchant I deem energetic and diligent in the pursuit of gain; but his calling is too much exposed to perils and mischances. On the other hand, farmers furnish the best men and the ablest soldiers; no calling is so honourable, safe, and inoffensive, as theirs, and those who occupy themselves with it are least liable to evil thoughts." * * The description of the husbandman which Cato gives is excellent and quite just, but how does it correspond to the system itself which he portrays and recommends? If a Roman senator, as must not unfrequently have been the case, possessed four such estates as that described by Cato, the same space, which in the olden time when small holdings prevailed had supported from 100 to 150 farmers' families, was now occupied by one family of free persons, and about 50 for the most part unmarried slaves. If this was the remedy by which the decaying national economy are to be restored to vigour, it bore, unhappily, an aspect of extreme resemblance to the disease.

But it is farmers
that furnish the
best men and
the ablest
soldiers.

(h). The general result of this system is only too clearly obvious in the changed proportions of the population. It is true that the condition of the various districts of Italy was very unequal, and some were even

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Para. 1, contd.

DECLINE OF
THE RURAL
POPULATION.

prosperous; * * but others had been drained of their population by the ravages and the demands of war.

(i). With every allowance for the inequality in the political and economic circumstances of the different districts, and for the comparatively flourishing condition of several of them, the retrogression is yet on the whole unmistakable, and it is confirmed by the most indisputable testimonies as to the general condition of Italy. Cato and Polybius agree in stating that Italy was at the end of the sixth century far weaker in population than at the end of the fifth, and was no longer able to furnish armies so large as in the first Punic war. * * At the same time the slave population increased as the free population declined. * * The nation was visibly diminishing, and the community of free citizens was resolving itself into a body composed of masters and slaves; and although it was, in the first instance, the two long wars with Carthage which decimated and ruined both the burgesses and the allies, the Roman capitalists beyond doubt contributed quite as much as Hamilcar and Hannibal to the decline in the vigour and the numbers of the Italian people. No one can say whether the Government could have rendered help; but it was an alarming and discreditable fact that the circles of the Roman aristocracy, well meaning and energetic as for the most part they were, never once showed any insight into the real gravity of the situation, or any foreboding of the full magnitude of the danger. * *

IV.—U. C. 600 to 650.

154 to 104.

Decline of the
part of the
Roman senate.

(a). Seventy years before, when the Illyrians had in a similar way laid hands on Roman deputies, the senate of that day had erected a monument to the murdered in the market-place, and had with an army and fleet called the murderers to account; on the other hand, the senate of this period (592—600) likewise ordered a monument to be raised to the murdered Guardian Regent of Syria; but instead of embarking troops for Syria they recognised the murderer Demetrius as king of the land. They were forsooth now so powerful, that it seemed superfluous¹ to guard their own honour. * *

(b). The capitalists continued to buy out the small land-holders, or, indeed, if they remained obstinate, to seize their fields without title of purchase; in which case, as may be supposed, matters were not always amicably settled.

(c). If matters were to go on at this rate (of decrease of burgesses), the burgess-body would resolve itself into planters and slaves; and the Roman State might at length, as was the case with the Parthians, purchase its soldiers in the slave market. Such was the internal condition of Rome when the State entered on the seventh century of its existence.

V.—U. C. 650.

The social ruin of Italy spread with alarming rapidity; since the aristocracy had given itself legal permission to buy out the small holders, and in its new arrogance allowed itself with growing frequency to drive them out, the farms disappeared like rain-drops in the sea.

¹ England in 1877 and 1878.

That the economic oligarchy at least kept pace with the political, is shown by the expression employed about 650 by Lucius Marcius Philippus, a man of moderate-democratic views that there were among the whole burgesses hardly 2,000 wealthy families.

VI.—U. C. 704 to 710 (*Julius Cæsar*).

(a). The corn distributions in the capital had hitherto been looked on as profitable prerogative of the community which ruled, and because it ruled, had to be fed by its subjects. This infamous principle was set aside by Cæsar; but it could not be overlooked that a multitude of wholly destitute burgesses had been protected solely by these largesses of food from starvation. In this aspect Cæsar retained them. While according to the Sempronian ordinance renewed by Cato every Roman burgess settled in Rome had possessed a legal claim to breadcorn without payment, this list of recipients, which had at last risen to the number of 320,000, was reduced, by the exclusion of all individuals having means or otherwise provided for, to 150,000, and this number was fixed once for all as the maximum number of recipients of free corn; at the same time an annual revision of the list was ordered, so that the places vacated by removal or death might be filled up with the most needful among the applicants. By this conversion of a political¹ privilege into a provision for the poor, a principle remarkable in a moral as well as in a historical point of view, came for the first time into living operation. * * It was the Attic civilization which first developed, in the Solonian and subsequent legislation, the principle that it is the duty of the community to provide for its invalids and for the poor generally; and it was Cæsar that first developed what in the restricted compass of Attic life had remained a municipal matter into an organic institution of State, and transformed an arrangement which was a burden and a disgrace to the commonwealth into the first of those institutions—in moslem times equally numerous and beneficial—where the infinite depth of human compassion contends with the infinite depth of human misery. * *

(b). On the other hand, Cæsar laboured energetically to diminish the mass of the free proletariat. The constant influx of persons brought by the corn-largesses to Rome was, if not wholly stopped, at least very materially restricted by the conversion of these largesses into a provision for the poor limited to a fixed number. The ranks of the existing proletariat were thinned on the one hand by the tribunals, which were instructed to proceed with unrelenting rigour against the rabble; on the other hand, by a comprehensive trans-marine colonisation;—of the 80,000 colonists whom Cæsar sent beyond the seas in the few years of his government, a very great portion must have been taken from the lower ranks of the population of the capital; most of the Corinthian settlers indeed were freedmen. * *

(c). It was a far more difficult task to remedy the deep disorganization of Italian society. Its radical misfortunes were those which we previously noticed in detail,—the disappearance of the agricultural,

¹ Manchester claims a like privilege; it has obtained free corn at a present imminent peril to English farmers, and it now demands that the wherewithal for buying the corn should be afforded to it by repeal of the Indian import duty on cotton.

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Para. 1, contd.

DECREASE
OF RURAL,
UNNATURAL
INCREASE OF A
MERCANTILE
POPULATION.

and the unnatural increase of the mercantile population, with which an endless train of other evils was associated. The reader will not fail to remember what was the state of Italian agriculture. In spite of the most earnest attempts to check the annihilation of the small holdings, farm husbandry was scarcely any longer the predominant species of economy during this epoch in any region of Italy proper, with the exception, perhaps, of the valleys of the Apennines and Abruzzi. * * Generally the management of estates, worked as they were on the planter-system,¹ had reached, in an economic point of view, a height scarcely to be surpassed. * * The solid Italian husbandry obtained at this period, when the general development of intelligence and abundance of capital rendered it fruitful, far more brilliant results than ever the old system of small cultivators could have given; and was carried even already beyond the bounds of Italy, for the Italian agriculture turned to account large tracts in the province by raising cattle and even cultivating corn.

Low rate of
interest; capital
flowed to Rome,
as now to
London.

(d). In order to show what dimensions money-dealing assumed by the side of this estate husbandry unnaturally prospering over the ruin of the small farmers; how the Italian merchants vying with the jews poured themselves into all the provinces and client-states of the kingdom; and how all capital immediately flowed to Rome, it will be sufficient, after what has been already said, to point to the single fact that in the money-market of the capital the regular rate of interest at this time was 6 per cent., and consequently money there was cheaper by a half than it was on an average elsewhere in antiquity.

Fearful dispro-
portion in
distribution of
-th.

(e). In consequence of this economic system, based both in its agrarian and mercantile aspects on masses of capital and on speculation, there arose a most fearful disproportion in the distribution of wealth. The often used and often abused phrase of a commonwealth composed of millionaires and beggars applies, perhaps, nowhere so completely as to the Rome of the last age of the republic. * *

considerable
portion of
population
migrated to
foreign lands.

(f). In consequence of such a social condition, the Latin stock in Italy underwent an alarming diminution, and its four provinces were overspread, partly by parasitic emigrants, partly by sheer desolation. A considerable portion of the population of Italy flocked to foreign lands. Already the aggregate amount of talent and of working power which the supply of Italian magistrates and Italian garrisons for the whole domain of the Mediterranean demanded, transcended the resources of the peninsula, especially as the elements thus sent abroad were in great part lost for ever to the nation. For the more that the Roman community grew into an empire embracing many nations, the more the governing aristocracy lost the habit of looking on Italy as their exclusive home; while of the men levied or enlisted for service, a considerable portion perished in the many wars, especially in the bloody civil war, and another portion became wholly estranged from their native country by the long period of service which sometimes lasted for a generation. * * As a compensation for these, Italy obtained on the one hand the proletariat of slaves and freedmen, on the other hand, the craftsmen and traders flocking thither from Asia Minor, Syria, and Egypt, who flourished chiefly in

¹ i.e., with slave labour.

the capital and still more in the sea-port towns of *Capri, Portus, and Brundisium.* * *

(g). It is a dreadful picture,—this picture of Italy under the rule of the oligarchy. There was nothing to bridge over or soften the *sharp* contrast between the world of the beggars and the world of the rich. The more clearly and painfully this contrast was felt on both sides, the giddier the height to which riches rose, the deeper the abyss of poverty yawned. The more frequently, amidst that changeful world of speculation and playing at hazard, were individuals tossed from the bottom to the top, and again from the top to the bottom. The wider the chasm by which the two worlds were externally divided, the more completely they coincided in the like annihilation of family life (which is yet the germ and core of all nationality), in the like luxury, the like unsubstantial economy, the like unmanly dependence, the like corruption differing only in its scale, the like demoralization of criminals, the like longing to begin the war with property. Riches and misery in close league drove the Italians out of Italy, and filled the peninsula partly with swarms of slaves, partly with awful silence. It is a terrible picture, but not one peculiar to Italy. Wherever the government of capitalists in a slave-state has fully developed itself, it has desolated God's fair world in the same way. As rivers glisten in different colours, but a common sewer everywhere looks like itself, so the Italy of the Ciceronian epoch resembles substantially the Hellas of Polybius, and still more decidedly the Carthage of Hannibal's time, where in exactly similar fashion the all-powerful rule of capital ruined the middle class, raised trade and state-farming to the highest prosperity, and ultimately led to a (hypocritically white-washed) moral and political corruption of the nation. * * *

But the terrible picture is not peculiar to Italy.

(h). In the agrarian question Cæsar, who already in his first consulship had been in a position to regulate it, more judicious than Tiberius Gracchus, did not seek to restore the farmer-system at any price, even at that of a revolution (concealed under clauses) directed against property. By him, on the contrary, as by every other genuine statesman, the security of that which is property, or is at any rate regarded by the public as property, was esteemed as the first and most inviolable of all political maxims, and it was only within the limits assigned by this maxim that he sought to accomplish the elevation of the Italian small holdings which appeared to him as a vital question for the nation. Even as it was, there was much still left for him in this respect to do. Every private right, whether it was called property or designated as heritable possession, whether traceable to Gracchus or to Sulla, was unconditionally respected by him. On the other hand, Cæsar, after he had, in his strictly economical fashion—which tolerated no waste and no negligence even on a small scale—instituted a general revision of the titles to Italian property by the revived commission of twenty, destined the whole actual domain land of Italy (including a considerable portion of the lands that were in the hands of spiritual guilds, but legally belonged to the State) for distribution in the Gracchian fashion, so far, of course, as it was fitted for agriculture. The Apulian summer and the Samnitan winter pastures belonging to the State continued to be domain; and the

Julius Cæsar's reforms.

APPENDIX XXXI.

MISCELLANEOUS.

I. ANALOGIES AND CONTRASTS.

I.—ENGLISH AND IRISH LAND SYSTEMS.

(a). The land systems of England and Ireland, though closely analogous in many respects as regards both history and structure, present nevertheless some features of striking dissimilarity. The prominent Irish land question is one relating to agriculture tenure, though it is so because the system in its entirety has prevented, not only the diffusion of landed property, but also the rise of manufactures, commerce, and other non-agricultural employments. In England, on the other hand, notwithstanding monstrous defects in the system of tenure, the prominent land question is one relating to the labourer, not to the farmer, and to the labourer in the town as well as in the country. The chief causes of this difference are, first, the violent conversion of the bulk of the English population into mere labourers long ago; and, secondly, the existence of great cities and various non-agricultural employments, created by mineral wealth and a superior commercial situation, but confined to particular spots by the accumulation of land in unproductive hands, by the uncertainty of the law and of titles, and by the scantness and poverty of the rural population on which country towns depend for a market. An immense immigration into a few great cities has accordingly been the movement in England, corresponding to emigration from Ireland; and no less than 5,133,157 persons, by official estimate, will, in the middle of the present year (1870), be gathered into seven large towns—London, Liverpool, Manchester, Birmingham, Leeds, Sheffield, and Bristol—3,214,707, or one-sixth of the total population, being concentrated in London alone. A two-fold mischief has thus been produced by the English land system, in the wretched and hopeless condition of the agricultural labourer on the one hand, and the precarious employment and crowded dwellings of the working classes in large towns on the other.

(b). This state of things engages the profound attention of economists on the Continent, struck by the contrast which the distribution of both land and population in England presents to what is found in every other part of the civilised world. "England," says a distinguished Englishman on the Continent, referring particularly to the researches of a German economist, "is the only Teutonic community, we believe we might say the only civilised community, in which the bulk of the land under cultivation is not in the hands of small proprietors; clearly, therefore, England represents the exception, and not the rule."—(*Professor T. E. Cliffe Leslie, 1870.*)

App.
XXXI.
—
ENGLISH AND
IRISH LAND
SYSTEMS.
—
PART I.

APP.
XXXI.IRISH AND
CONTINENTAL
SYSTEMS.

Para. 1, contd.

II.—IRISH AND CONTINENTAL SYSTEMS.

(a). Let Ireland on the one hand and Belgium (or Prussia, since the introduction of Stein's system) on the other be taken as illustrations. In the former were to be seen immense estates held and let at second-hand by "middlemen," and let and sublet again, like a sporadic growth generating its kind, till it reached, if it *did* reach, its unit in the potatoepatch. In the latter, the law which facilitates and cheapens purchase, to the small equally with the large buyer, beginning at the *small end*, so to speak, sets at work the self-interest and care, and precedence of every individual who can buy, no matter what the quantity. The result shows itself in the conduct and character of a whole people. In each case, the land reflects like a mirror the motives set to work upon it. Take away the individual sense of property, and the opposite result is seen. Arthur Young's often-quoted words underlie the whole question. Those who attribute the results experienced in Ireland to national character, find in Ireland examples which contradict the judgment, even were it not nullified by the impossibility of distinguishing between cause and effect. In his speech on the second reading of the Irish Church Bill, the Bishop of Lichfield (late Bishop of New Zealand) said—

"In New Zealand, Englishmen, Scotchmen, and Irishmen, live together upon the best terms. The qualities of each particular class become blended with each other to the improvement of all. No discussion as to tenant-right can arise, *because every tenant has the right of purchasing the land he holds at a fixed price*. Under these circumstances, the tenants, instead of being lazy and drunken, strain every nerve in order to save the money which will enable them to become proprietors of the land they occupy. In this way it happens that the most irregular people of the Irish race become steady and industrious, acquiring property, and losing all their wandering habits, until it becomes almost impossible to distinguish between the comparative value of the character of Irish and Scotch elements.

"Of their loyalty to the Crown I can speak from my own observation, for the only regiment that is employed in keeping order in New Zealand is *Her Majesty's Royal Irish*."

(b). But if this be true in New Zealand, it is not less exemplified at Home, where the impartial pen of the *Times*' correspondent in Ireland has exhibited instances of estates as well managed by *resident proprietors*, and in some cases by intelligent agents, and a tenantry as satisfied, prosperous, and attached, as in any part of England.—(*Mr. W. C. Hoskyns, Cobden Club Series*.)

III.—IRELAND AND FLANDERS.

(a). In England a contrast is often drawn between Flanders and Ireland, and the former is said to enjoy agricultural advantages not possessed by Ireland, such as great markets, a better climate, abundance of manure, more manufactures. This is a point on which some light should be thrown. Flanders does enjoy certain advantages, but they are equally accessible to the Irish, derived as they are from human industry;

whereas the advantages possessed by Ireland, coming as they do from nature, are not within the reach of the Flemish.

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IRELAND AND
FLANDERS.

Para. 1, contd.

(b). Let us look first at climate and soil. The climate of Ireland is damper and less warm in summer, but less cold in winter. In Flanders it rains 175 days in a year; in Ireland, 220 days. On this account the Irish climate is more favourable to the growth of grass, forage, and roots, but less so to the ripening of cereals; yet the Fleming would be but too happy had he such a climate—cereals being but of secondary importance with him and often used as food for his cattle. He seeks only abundance of food for his cows, knowing that the value of live-stock goes on increasing, while that of cereals remains stationary. Butter, flax, colza, and chicory, are the staple articles of his wealth, and the climate of Ireland is at least as well suited to the production of these as that of Flanders.

(c). As for the soil of Ireland, it produces excellent pasture *spontaneously*; whilst that of Flanders hardly permits of the natural growth of heather and furze. It is the worst soil in all Europe—sterile sand, like that of La Campine and of Brandenburg. A few miles from Antwerp, land sells for 20 francs (16s.) an acre, and those who buy it for the purpose of cultivation get ruined. Having been fertilised by ten centuries of laborious husbandry, the soil of Flanders does not yield a single crop without being manured—a fact unique in Europe. * * Not a blade of grass grows in Flanders without manures. The ideal, the dream of the Flemish farmer, is a few acres of good grass. In Ireland nature supplies grass in abundance.

(d). But it may be said that Flanders is well supplied with manure. Doubtless it is; but it is got only by returning to the earth all that has been taken from it. The Flemish farmer scrupulously collects every atom of sewage from the towns; he guards his manure like a treasure, putting a roof over it to prevent the rain and sunshine from spoiling it. He gathers mud from rivers and canals, the excretions of animals along the high roads, and their bones for conversion into phosphate. With cows' urine, gathered in tanks, he waters turnips, which would not come up without it, and he spends incredible sums in the purchase of guano and artificial manures.

(e). True, it may be said, he must have money for that, and the Irishman has none. But where does the Fleming's money come from? From his flax, colza, hops, and chicory—crops which he sells at the rate of from 600 to 1,500 francs (£24 to £60) per hectare. And why cannot the Irishman go and do likewise? The Irishman, it may be answered, must grow food for himself. But so does the Fleming; for, in fact, apart from the special crops referred to, he grows enough to support a population relatively twice as large as that of Ireland. The special crops for which Flanders is famous are shipped to England, and the English markets are not farther from Ireland than from Flanders.

(f). But there are manufactures in Flanders, it is said, and none in Ireland, or only Ulster. Now, on this point it is important to draw a distinction. Flanders possesses undoubtedly a number of small local industries, but they are the consequences, not the cause, of its good husbandry, and any country possessing the latter would be in possession

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IRELAND AND
FLANDERS.

Para. I, contd.

of the former. The great industries of Belgium are situated in the Walloon country, not in Flanders.

(g). On the whole, for carrying farming to a high pitch of perfection, Ireland enjoys far greater advantages than Flanders, the land being much superior, the climate equally favourable to the growth of valuable crops, and the same markets being at hand.—(*M. Emile de Lavelaye, Cobden Club Essays.*)

IV.—IRELAND AND BENGAL.

These considerations would justify the interference of the State to afford agricultural tenants in England greater security than they at present enjoy. But the claim of the tenant in Ireland on the protection of the State is infinitely stronger. The landholders of Ireland are not only, in the same sense as those of England, the creatures with pre-emption of the State, but they are the creatures of a violent interference in existing rights of property. Moreover, by further violent interference in the shape of penal laws, directed expressly against industry and accumulation on the part of the bulk of the people, and precluding the acquisition of property and capital and the rise of other industries, the State forced the great mass of the population to become competitors for the occupation of land as a means of subsistence. They were thus placed even more at the mercy of the landlord than the Egyptians were at the mercy of Pharaoh in the famine, for their land as well as their cattle and money were gone, and nothing remained to exchange for bread but their bodies and their labour. Rent under these circumstances became, not what political economists define it, the surplus above average wages and profit, but the surplus above minimum wages without any profit at all.—(*Professor T. E. Cliffe Leslie, 1866.*)

2. EMIGRATION AND THE COLONIES—(*Mr. J. A. Froude, January 1870.*)

I. (a). Emigration remains the only practical remedy for the evils of Ireland, England, and Scotland, which contain as many people as in the present condition of industry they can hold. The annual increase of the population has to be drafted off and disposed of elsewhere; and while the vast proportion of it continues to be directed on the shores of the American Republic, those who leave us, leave us for the most part resenting the indifference with which their loss is regarded. They part from us as from a hard step-mother. They are exiles from a country which was the home of their birth, which they had no desire to leave, but which drives them from her at the alternative of starvation.

(b). England at the same time possesses dependencies of her own, not less extensive than the United States, not less rich in natural resources, not less able to provide for these expatriated swarms, where they would remain attached to her Crown, where their well-being would be our well-being, their brains and arms our brains and arms, every acre which they could reclaim from the wilderness so much added to English soil, and themselves and their families fresh additions to our national stability. * *

(c). And yet it is even argued that our colonies are a burden to us, and that the sooner they are cut adrift from us the better. They are, or have been, demonstratively loyal. They are proud of their origin, conscious of the value to themselves of being part of a great empire, and willing and eager to find a home for every industrious family that we can spare. We answer impatiently that they are welcome to our people, if our people choose to go to them; but whether they go to them or to America, whether the colonies themselves remain under our flag, or proclaim their independence, or attach themselves to some other power, is a matter which concerns themselves entirely, and is to us of profound indifference. * *

(d). It used to be considered that the first of all duties in an English citizen was his duty to his country. His country in return was bound to preserve and care for him. What change has passed over us, that allegiance can now be shifted at pleasure like a suit of clothes? Is it from some proud consciousness of superabundant strength? Are our arms so irresistible that we have no longer an enemy to fear? Is our prosperity so overflowing and the continuance of it so certain that we can now let it flow from us elsewhere because we can contain no more? Our national arrogance will scarcely presume so far. Is it that the great powers of the world have furled their battle flags? Is the parliament of man on the way to be constituted, and is the rivalry of empires to be confined for the future to competition in the arts of peace? Never at any period in the world's history was so large a share of the profits of industry expended upon armies and arms. * *

II. When we consider the increasing populousness of other nations, their imperial energy, and their vast political development; when we contrast the enormous area of territory which belongs to Russia, to the United States, or to Germany, with the puny dimensions of our own island home, prejudice itself cannot hide from us that our place as a first-rate power is gone among such rivals, unless we can identify the colonies with ourselves, and multiply the English soil by spreading the English race over them. Our fathers, looking down into coming times, proud of their country and jealous for its greatness, secured at the cannon's mouth the fairest portions of the earth's surface to the English flag. They bequeathed to us an inheritance so magnificent, that imagination itself cannot measure the vastness of its capabilities. Let the Canadian Dominion, let Australia, the Cape, and New Zealand, be occupied by subjects of the British Crown, be consolidated by a common cord of patriotism—equal members, all of them, of a splendid empire, and alike interested in its grandeur—and the fortunes of England may still be in their infancy, and a second era of glory and power be dawning upon us, to which our past history may be but the faint and insignificant prelude. The yet unexhausted vigour of our people, with boundless room in which to expand, will reproduce the old English character and the old English strength over an area of a hundred Britains. The United States of America themselves do not possess a more brilliant prospect.

It is no less certain that if we cannot rise to the height of the occasion, the days of our greatness are numbered.

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 EMIGRATION
 AND THE COLO-
 NIES.
 Para. 2, contd.

3. POSSESSION OF LAND STIMULATES PATRIOTISM.

I. The attachment of a people to their country depends upon the sense in which it is really and truly their home. Men will fight for their homes, because without a home they and their families are turned shelterless adrift; and as the world has been hitherto constituted, they have had no means of finding a new home for themselves elsewhere. And the idea of home is inseparably connected with the possession or permanent occupation of land. Where a man's property is in money, a slip of paper will now transfer it to any part of the world to which he pleases to send it. Where it is in the skill of his hands, there is another hemisphere now open to him, where employers speaking his own language are eager to secure his services. Land alone he cannot take with him. The fortunes of the possessors of the soil of any country are bound up in the fortunes of the country to which they belong, and thus those nations have always been the most stable in which the land is most widely divided, or where the largest number of people have a personal concern in it. Interest and natural feeling coincide to produce the same result. Ridicule as we please what is now looked upon as sentimentalism, we cannot escape from our nature. Attachment to locality is part of the human constitution. Those who have been brought up in particular places have a feeling for them which they cannot transfer. A family which has occupied a farm for one or two years will leave it without difficulty. In one or two generations the wrench becomes severely painful. To remove tenants after half a dozen generations is like tearing up a grown tree by the roots. The world is not outgrowing associations of this kind. It never can or will outgrow them. The *aræ et foci*, the sense of home and the sacred associations which grow up along with it, are as warm in the New Continent as in the Old. It is not that every member of a family must remain on the same spot. The professions and the trades necessarily absorb a large proportion of the children as they grow to manhood; but it is the pride of the New Englander to point to his namesake and kinsman now occupying the farm which was cleared by his Puritan ancestors. The home of the elder branch is still the home of the family, and the links of association, and all the passions which are born of it, hold together and bind in one the scattered kindred.

II. England was once the peculiar nursery of this kind of sentiment, and thus it was that an Englishman's patriotism was so peculiarly powerful. It has seemed of late as if all other countries understood it better than we. In France, in Germany, in Prussia, even in Spain and Italy, either revolution or the wisdom of Government has divided the land. The great proprietors have been persuaded or induced to sell; when persuasion has failed, they have been compelled. The laws of inheritance are so adjusted as to make accumulation of estates impossible. Two-thirds, or at least half, the population of those countries have their lives and fortunes interlinked inseparably with the soil; and their fidelity in time of trial is at once rewarded and guaranteed by the possession of it. England is alone an exception. When serfdom was extinguished in Prussia, each serf had a share in his late owner's land assigned to him as his own. The English villein was released from his bondage with no further compensation, and is now the agricultural

labourer—the least cared for specimen of humanity in any civilised country. In France there are five million landed proprietors. In England the exact numbers are unknown, but it is notorious that during the last century the small agricultural freeholds have been generally devoured by the large. In the neighbourhood of the great towns, estates have been broken up and sold in small portions for the villas of merchants and manufacturers; but the possibility of ownership recedes daily further from the reach of any but the favourites of fortune. The wealthy alone possess that original hold on English soil which entitles England in return to depend upon them on the day of trial; and thus it is that, to persons who think seriously, there appears something precarious in England's greatness, as if with all her wealth and all her power a single disaster might end it. No nation ever suffered a more tremendous humiliation than France in the second occupation of Paris; a third time she has seen her capital occupied, and her entire social system crumbled into anarchy. But she rallied before, and she will unquestionably rally once more. Her population remain rooted in the soil to which they are passionately attached, and their permanent depression is impossible. Forty millions of people can neither be destroyed nor removed; and where the people are, and where the land is their own, their recovery is a matter of but a few years at most. They may lose men and money and an outlying province, but that is all the injury which an external power can inflict on them. With England it is difficult to feel the same confidence. If the spell of our insular security be once broken, if it be once proved that the Channel is no longer an impossible barrier, and that we are now on a level with the Continent, the circumstances would be altered which have given us hitherto our exceptional advantages; and those of us who can choose a home elsewhere, who have been deprived of everything which should specially attach us to English soil,—that is to say, ninety-nine families out of every hundred,—will have lost all inducement to remain in so unprofitable a neighbourhood.—(*Mr. Froude, 1870.*)

APP.
XXXI.NATIONAL
PROPERTY.

Para. 3, contd.

4. ON NATIONAL PROPERTY—(*Professor Nassau Senior.*)

I. The great object and the great difficulty in government is the preservation of individual property. All the fraud and almost all the violence, which it is the business of Government to prevent and repress, arise from the attempts of mankind to deprive one another of the fruits of their respective industry and frugality. * *

II. (a). But the most revolting, and perhaps the most mischievous, form of robbery is that in which the Government itself becomes an accomplice,—when the property of whole classes of individuals is swept away by legislative enactments, and men owe their ruin to that very institution which was created to ensure their safety.

(b). It is highly honourable to the honesty and sagacity of the people of England that they have guarded against this evil with almost superstitious care, and have allowed every individual to oppose his own interests to those of the public to the utmost extent to which, with any resemblance to decency, they can be urged. It may be a question, indeed, whether they have not often gone beyond this point, and allowed pleas of well-founded expectations, or (as they are usually termed) vested interests,

to impede the general good to an unnecessary, and, therefore, a mischievous degree.

III. (a). But with all our anxiety—and it is a very proper anxiety—to hold the balance even between individuals and the public, or to lean rather towards the weaker party, there are two landmarks which we have never transgressed; the individual interests, which, whether in possession or in expectation, we have considered as property, even when inconsistent with the public welfare, and either left untouched or bought up at an ample price, have been, in the first place, lawful, and, secondly, capable of valuation.

(b). No interest, however definite and vested, can be respected, if it be unlawful. No voice has ever been lifted up in defence of the vested interests of paupers in poor-law abuses, or of vestrymen and overseers in parochial jobbing. So far, indeed, has this been carried, that a profit based on an illegal act is not held entitled to mere ordinary protection against an equally unlawful aggression. The printer who pirated Lord Byron's "Cain" was allowed to plead his own wrong in his own defence; to maintain, and to maintain successfully, that "Cain" being an unlawful publication was not property, and therefore could not be the subject of plunder.

(c). Nor can any interest, however lawful, be considered property as against the public, unless it be capable of valuation. And for this reason, if incapable of valuation, it must be incapable of compensation, and therefore, if inviolable, would be an unsurmountable barrier to any improvement inconsistent with its existence.

(d). If a house is to be pulled down, and its site employed for public purposes, the owner receives a full compensation for every advantage connected with it which can be estimated. But he obtains no *pretium affectionis*. He is not paid a larger indemnity because it was the seat of his ancestors, or endeared to him by any peculiar associations. His claim on any such grounds for compensation is rejected, because as the subject-matter is incapable of valuation, to allow it would open a door to an indefinite amount of fraud and extortion; nor is he allowed to refuse the bargain offered to him by the public, because such a refusal would be inconsistent with the general interest of the community. * *

(e). Of course we do not mean to affirm that every lawful interest which is susceptible of valuation is property, and therefore entitled to be either compensated or left undisturbed. In legislation we are constantly forced to choose between motives acting in opposite directions, and to purchase general advantage at the expense of particular inconvenience. It is an evil that any fair expectation should be disappointed. But there are cases in which the public welfare requires this evil to be submitted to. * * * The hope of eventually succeeding to an estate the present possessor of which is seized in fee, or, in other words, has the absolute property, is an instance of a lawful interest capable of estimation and even of alienation, but utterly unprotected. It is left exposed to the extravagance or caprice of the tenant in fee-simple. It has recently, and in many thousand instances, been taken away by the legislature, and without compensation. Until January 1, 1834, no person could inherit the freehold property of his lineal descendants. On the death of a person possessed of such property, intestate and without issue,

ing a father or mother, or more remote lineal ancestor, it went over to his collateral relatives. In 1833 this law was wholly altered. In such cases the property now goes to the father or mother, or remote lineal ancestor, in preference to the collaterals. In many instances this must defeat expectations not merely well founded, but approaching to certainties. The brothers, uncles, nephews, and cousins of lunatics, or of minors in such a state of health as to be very unlikely to reach the age at which they could be capable of making a will, had, until the 3rd and 4th Will. IV, cap. 106, was passed, prospects of succession so definite, that in many cases they would have sold for considerable prices. All these interests, though lawful and capable of valuation, have been swept away without compensation. And it was necessary that this should be done; the old law was obviously inconvenient, and to have attempted to compensate all those who, if the principle of compensation had been admitted, must have been held entitled to it, would have involved such an expense as to have rendered the alteration of the law impracticable. We affirm, not that every lawful interest which is capable of valuation is inviolable, but that no interest can be held inviolable as against the public unless it be capable of valuation. * *

IV. (a). The estates of Bishops and chapters, of the universities and their colleges and halls, and, generally speaking, of all corporations, have no owners beyond the life-interests of the existing Bishops and members of chapters and corporations. Those life-interests the State is bound to protect; to affect them without the consent of their owners would be, as we have already stated, spoliation in one of its most odious forms. But, subject to those life-interests, the State is not only justified, but absolutely bound, to employ the property in the way most conducive to the public interest. In many, indeed in the vast majority of cases, the existing application, or at least an application of the same kind, is on the whole the best that can be adopted. * * But while, on the one hand, we deny the expediency of diverting the estates of the universities from educational, and those of the sees and chapters and benefices in question from ecclesiastical purposes; while we affirm that such a diversion would be short-sighted and barbarous folly; on the other hand, we equally deny that, supposing the existing life-interests to be untouched, and that the diversion could be proved to be expedient, it would be an *injustice*. In other words, if the expediency can be proved, we affirm the right.

(b). And not only must the expediency, on which alone the right is founded, be clearly proved, but it must be an expediency with reference to the nation as a permanent body. A violation of this last rule appears to be the only mode in which a nation can commit an injustice, ~~and~~ no assignable individual has a right to consider himself as ~~unjustly~~ treated.

5. MR. J. HECTOR (*Railways and Land*).

I. But the remedy. Had we to settle accounts with the ~~landowners~~ 1793, the matter would be plain enough. Unfortunately ~~it is not~~ them that we have to deal; much of the land, perhaps ~~has~~ changed hands over and over again since they ~~possessed~~

APP.
XXXI.
M. J. HECTOR.
Para. 2, contd.

be rated in that proportion. * * We do not propose, be it understood, to lay down one-half as an arbitrary limit to which the Government share of the rental should be raised. We must, in familiar language, 'cut our coat according to our cloth'; and if we cannot have one-half, why we must be satisfied with less. The share we obtain will depend on the price we pay; but the latter must in turn depend on what we can afford.

APP. XXXI.

Value of annuity.
Para. 8.

6. The law not only enables an owner of land in fee-simple to leave the land to whom he will, but it gives him power, by deed or will, to limit the land to any number of persons after him for life, and to the unborn son of the last survivor, so that such unborn son will become the first person who shall have full power over the land after the death of the maker of the deed or will. Allowing for the minority of the son of the last survivor, the law in fact permits a man to tie up the land for a life or lives in being, and for twenty-one years after the death of the last life, being an average of rather less than seventy years.

7. MR. J. MACDONELL (*On the Land Question*).

A perpetual annuity of £56,540,000, or the annual value of land in the United Kingdom, is equal to a terminable annuity varying in amount with its duration. I apprehend that thinkers such as Mr. Mill would argue that the latter would be a full equivalent of all the land-owners' just claims. If he and those of his way of thinking are right, then all which it would be essential to raise would be the difference between the perpetual and the terminable annuity for a certain number of years.

If, then, all proprietors receive at the present time the value of the reversions of their land, and if they were allowed to enjoy their estates for the period of their lives, they would be compensated.

Ample justice would be done by the present payment of a sum which would one hundred and fifty years hence yield a perpetual annuity equal to or slightly in excess of the present annual value of the soil.

8. 1. Present value of a perpetual annuity of £1 to be entered upon—

	5 per cent.	6 per cent.	8 per cent.
70 years hence ...	·657323	·282122	·057180
100 " " ...	·152690	·049120	·005682

2. Present value of an annuity of £1 per annum for—

40 years ...	17·159086	15·046207	11·924613
70 " ...	19·342677	16·384544	12·442820
100 " ...	19·847910	16·617546	12·494318

3. Present value of a life annuity (age 21) beginning (Carlisle)—

70 years hence ...	·51685345	·23307294	·05008185
100 " " ...	·11958824	·04058137	·004976852

4. Value of perpetual annuity—